

# INDIAN FOREST RESOURCES MANAGEMENT ACT

Y 4. IN 2/11: S. HRG. 104-350

Indian Forest Resources Management...

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

OVERSIGHT HEARING ON IMPLEMENTATION OF TITLE III OF PUBLIC  
LAW 101-630, THE NATIONAL INDIAN FOREST RESOURCES MANAGE-  
MENT ACT

SEPTEMBER 20, 1995  
WASHINGTON, DC

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# NATIONAL INDIAN FOREST RESOURCES MANAGEMENT ACT

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WEDNESDAY, SEPTEMBER 20, 1995

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:35 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senator McCain.

## STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. This hearing of the Committee on Indian Affairs will come to order.

I'd like to welcome the witnesses here today for this committee hearing to review the implementation of the National Indian Forest Resources Management Act. Nearly 5 years ago, the Congress enacted this law to address the many concerns of Indian tribes over the substandard condition of their forest and woodland resources, poor management practices of the Bureau of Indian Affairs [BIA] and the lack of any express standards to manage Indian forest lands.

Let me start out by saying that in passing this act, we affirmed the Federal Government's trust responsibility for the care and management of Indian forests and woodlands. This act established a comprehensive statutory framework of performance standards for improved forest resources management and to correct past mismanagement by the BIA. Most significantly, the act authorized tribes as the primary decisionmakers for the future of their forests in keeping with the spirit of the Federal policy of Indian self-determination.

[Text of Public Law 101-630 follows:]

National Indian  
Forest Resources  
Management  
Act.

## TITLE III—INDIAN FOREST AND WOODLANDS

25 USC 3101  
note.

### SEC. 301. SHORT TITLE.

This title may be cited as the "National Indian Forest Resources Management Act".

25 USC 3101.

### SEC. 302. FINDINGS.

The Congress finds and declares that—

(1) the forest lands of Indians are among their most valuable resources and Indian forest lands—

(A) encompass more than 15,990,000 acres, including more than 5,700,000 acres of commercial forest land and 8,700,000 acres of woodland,

(B) are a perpetually renewable and manageable resource,

(C) provide economic benefits, including income, employment, and subsistence, and

(D) provide natural benefits, including ecological, cultural, and esthetic values;

(2) the United States has a trust responsibility toward Indian forest lands;

(3) existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian forest lands;

(4) the Federal investment in, and the management of, Indian forest land is significantly below the level of investment in, and management of, National Forest Service forest land, Bureau of Land Management forest land, or private forest land;

(5) tribal governments make substantial contributions to the overall management of Indian forest land; and

(6) there is a serious threat to Indian forest lands arising from trespass and unauthorized harvesting of Indian forest land resources.

25 USC 3102.

### SEC. 303. PURPOSES.

The purposes of this title are to—

(1) allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(2) clarify the authority of the Secretary to make deductions from the proceeds of sale of Indian forest products, assure the

use of such deductions on the reservation from which they are derived solely for use in forest land management activities, and assure that no other deductions shall be collected;

(3) increase the number of professional Indian foresters and related staff in forestry programs on Indian forest land; and

(4) provide for the authorization of necessary appropriations to carry out this title for the protection, conservation, utilization, management, and enhancement of Indian forest lands.

#### SEC. 304. DEFINITIONS.

25 USC 3103

For the purposes of this title, the term—

(1) "Alaska Native" means Native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604);

(2) "forest" means an ecosystem of at least one acre in size, including timberland and woodland, which—

(A) is characterized by a more or less dense and extensive tree cover,

(B) contains, or once contained, at least ten percent tree crown cover, and

(C) is not developed or planned for exclusive nonforest use;

(3) "Indian forest land" means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken;

(4) "forest land management activities" means all activities performed in the management of Indian forest lands, including—

(A) all aspects of program administration and executive direction such as—

(i) development and maintenance of policy and operational procedures, program oversight, and evaluation,

(ii) securing of legal assistance and handling of legal matters,

(iii) budget, finance, and personnel management, and

(iv) development and maintenance of necessary data bases and program reports;

(B) all aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans;

(C) forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment;

(D) protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of firebreaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements;

(E) protection against insects and disease, including—

- (i) all aspects of detection and evaluation,
- (ii) preparation of project proposals containing project description, environmental assessments and statements, and cost-benefit analyses necessary to secure funding,
- (iii) field suppression operations, and
- (iv) reporting;

(F) assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance, and report, demand letter, and testimony preparation;

(G) all aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents including—

- (i) cruising, product marking, silvicultural prescription, appraisal and harvest supervision,
- (ii) forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products,
- (iii) archeological, historical, environmental and other land management reviews, clearances, and analyses,
- (iv) advertising, executing, and supervising contracts,
- (v) marking and scaling of timber, and
- (vi) collecting, recording and distributing receipts from sales;

(H) provision of financial assistance for the education of Indians enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses;

(I) participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands;

(J) improvement and maintenance of extended season primary and secondary Indian forest land road systems; and

(K) research activities to improve the basis for determining appropriate management measures to apply to Indian forest lands;

(5) "forest management plan" means the principal document, approved by the Secretary, reflecting and consistent with a tribal integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include—

(A) standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and

- (B) standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan;
- (6) "forest product" means—
- (A) timber,
  - (B) a timber product, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products,
  - (C) bark,
  - (D) Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs,
  - (E) other marketable material, and
  - (F) gravel which is extracted from, and utilized on, Indian forest lands;
- (7) "forest resources" means all the benefits derived from Indian forest lands, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest lands;
- (8) "forest trespass" means the act of illegally removing forest products from, or illegally damaging forest products on, forest lands;
- (9) "Indian" means a member of an Indian tribe;
- (10) "Indian land" means land title to which is held by—
- (A) the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or
  - (B) an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;
- (11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation;
- (12) "reservation" includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma;
- (13) "Secretary" means the Secretary of the Interior;
- (14) "sustained yield" means the yield of forest products that a forest can produce continuously at a given intensity of management; and
- (15) "tribal integrated resource management plan" means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of such tribe's natural resources.

SEC. 305. MANAGEMENT OF INDIAN FOREST LAND.

25 USC 3104

(a) **MANAGEMENT ACTIVITIES.**—The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(b) **MANAGEMENT OBJECTIVES.**—Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives—



(1) the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to—

- (A) the harvesting of forest products,
- (B) forestation,
- (C) timber stand improvement, and
- (D) other forestry practices;

(2) the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives and forest marketing programs;

(3) the regulation of Indian forest lands in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) the development of Indian forest lands and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) the management and protection of forest resources to retain the beneficial effects to Indian forest lands of regulating water run-off and minimizing soil erosion; and

(7) the maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

25 USC 3105.

#### SEC. 306. FOREST MANAGEMENT DEDUCTION.

(a) **WITHHOLDING OF DEDUCTION.**—Pursuant to the authority of section 1 of the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), the Secretary shall withhold a reasonable deduction from the gross proceeds of sales of forest products harvested from Indian forest land under a timber sale contract, permit, or other harvest sale document, which has been approved by the Secretary, to cover in whole or part the cost of managing and protecting such Indian forest land.

(b) **AMOUNT OF DEDUCTION.**—Deductions made pursuant to subsection (a) shall not exceed the lesser amount of—

- (1) 10 percent of gross proceeds, or

(2) the percentage of gross proceeds collected on the date of enactment of this title as forest management deductions by the Secretary on such sales of Indian forest products, unless the appropriate Indian tribe consents to an increase in the deductions.

(c) **USE OF DEDUCTION.**—The full amount of any deduction collected by the Secretary shall be expended according to an approved expenditure plan, approved by the Secretary and the appropriate Indian tribe, for the performance of forest land management activi-



ties on the reservation from which such deductions are collected and shall be made available to the tribe, upon its request, by contract or agreement for the performance of such activities.

(d) LIMITATIONS.—(1) Forest management deductions withheld pursuant to this section shall not be available to—

(A) cover the costs that are paid from funds appropriated specifically for fire suppression or pest control, or

(B) otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest lands.

(2) No other forest management deductions derived from Indian forest lands shall be collected to be covered into the general funds of the United States Treasury.

#### SEC. 307. FOREST TRESPASS.

25 USC 3106.

(a) CIVIL PENALTIES; REGULATIONS.—Not later than 18 months from the date of enactment of this title, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of forest trespass which provide for—

(A) collection of the value of the products illegally removed plus a penalty of double their value,

(B) collection of the costs associated with damage to the Indian forest land caused by the act of trespass, and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility with the Department of the Interior for the detection and investigation of forest trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) TREATMENT OF PROCEEDS.—The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of forest products from the Indian forest lands upon which such trespass occurred.

(c) CONCURRENT JURISDICTION.—Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) shall have concurrent civil jurisdiction to enforce the provisions of this section and the regulation promulgated thereunder. The Bureau of Indian Affairs and other agencies of the Federal Government shall, at the request of the tribe, defer to tribal prosecutions of forest trespass cases. Tribal court judgments regarding forest trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section.

#### SEC. 308. DIRECT PAYMENT OF FOREST PRODUCTS RECEIPTS.

25 USC 3107

(a) REGULATIONS.—Notwithstanding any other law, the Secretary shall, within 1 year from the date of enactment of this title, promulgate regulations providing for the payment of the receipts from the sale of Indian forest products as provided in this section.

(b) PAYMENT INTO A BANK DEPOSITORY.—Upon the request of an Indian tribe, the Secretary shall provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit or other harvest sale document which has been

approved by the Secretary, shall make prompt direct payments of the gross proceeds of sales of such forest products, less any amounts segregated as forest management deductions pursuant to section 306, into a bank depository account designated by such Indian tribe

45 USC 3108

#### SEC. 309. SECRETARIAL RECOGNITION OF TRIBAL LAWS.

Subject to the Secretary's responsibilities as reflected in sections 302(2) and 303(1) and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands. Such cooperation shall include—

- (1) assistance in the enforcement of such laws;
- (2) provision of notice of such laws to persons or entities undertaking activities on Indian forest lands; and
- (3) upon the request of an Indian tribe, the appearance in tribal forums.

25 USC 3109.

#### SEC. 310. INDIAN FOREST LAND ASSISTANCE ACCOUNT.

(a) **ESTABLISHMENT.**—At the request of an Indian tribe, the Secretary may establish a special Indian forest land assistance account within the tribe's trust fund account to fund the Indian forest land management activities of such tribe.

(b) **DEPOSITS AND EXPENDITURES.**—(1) The Secretary may deposit into the Indian forest land assistance account established pursuant to subsection (a) any funds received by the Secretary or in the Secretary's possession from—

(A) non-Federal sources, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation.

(B) donations and contributions,

(C) unobligated forestry appropriations for the benefit of such Indian tribe, and

(D) user fees or other funds transferred under Federal inter-agency agreements if otherwise authorized by Federal law and, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation.

Funds deposited in such account shall be for the purpose of conducting forest land management activities on the Indian forest lands of such tribe.

(2) Funds in the Indian forest land assistance account and any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for meeting the Federal responsibility for management of Indian forest lands.

(c) **AUDITS.**—At the request of an Indian tribe or upon the Secretary's own volition, the Secretary may conduct audits of the Indian forest land assistance account and shall publish the results of such audit.

25 USC 3110

#### SEC. 311. TRIBAL FORESTRY PROGRAMS.

(a) **ESTABLISHMENT.**—The Secretary shall establish within the Bureau of Indian Affairs a program to provide financial support to forestry programs established by an Indian tribe.

Regulations

(b) **SUPPORT ALLOCATION FORMULA; CRITERIA.**—(1) The Secretary, with the participation of Indian tribes with Indian forest lands, shall establish, and promulgate by regulations, a formula—

(A) for the determination of Indian tribes eligible for such support,

(B) for the provision of levels of assistance for the forestry programs of such tribes, and

(C) the allocation of base support funds to such tribes under the program established pursuant to subsection (a).

(2) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one professional forester, including fringe benefits and support costs, for each eligible tribe, and

(B) one additional professional forester or forest technician, including fringe benefits and support costs, for each level of assistance for which an eligible Indian tribe qualifies.

(3) In any fiscal year that appropriations are not sufficient to fully fund tribal forestry programs at each level of assistance under the formula required to be established in this section, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance.

**SEC. 312. ASSESSMENT OF INDIAN FOREST LAND AND MANAGEMENT PROGRAMS.** 25 USC 3111

(a) **INITIAL ASSESSMENT.**—(1) Within 1 year after the date of enactment of this title, the Secretary, in consultation with affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in forest management practices on Federal and private lands to conduct an independent assessment of Indian forest lands and Indian forest land management practices.

Government contracts.

(2) Such assessment shall be national in scope and shall include—

(A) an in-depth analysis of management practices on, and the level of funding for, specific Indian forest land compared with similar Federal and private forest lands,

(B) a survey of the condition of Indian forest lands, including health and productivity levels,

(C) an evaluation of the staffing patterns of forestry organizations of the Bureau of Indian Affairs and of Indian tribes,

(D) an evaluation of procedures employed in timber sales administration, including preparation, field supervision, and accountability for proceeds,

(E) an analysis of the potential for reducing or eliminating relevant administrative procedures, rules and policies of the Bureau of Indian Affairs consistent with the Federal trust responsibility,

(F) a comprehensive review of the adequacy of Indian forest land management plans, including their compatibility with applicable tribal integrated resource management plans and their ability to meet tribal needs and priorities,

(G) an evaluation of the feasibility and desirability of establishing minimum standards against which the adequacy of the forestry programs of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian tribes can be measured, and

(H) a recommendation of any reforms and increased funding levels necessary to bring Indian forest land management programs to a state-of-the-art condition.

(3) Such assessment shall include specific examples and comparisons from each of the regions of the United States where Indian forest lands are located.

(4) The initial assessment required by this subsection shall be completed no later than 36 months following the date of enactment of this title. Upon completion, the assessment shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

(b) PERIODIC ASSESSMENTS.—On each 10-year anniversary of the date of enactment of this title, the Secretary shall provide for an independent assessment of Indian forest lands and Indian forest land management practices under the criteria established in subsection (a) which shall include analyses measured against findings in previous assessments.

(c) STATUS REPORT TO CONGRESS.—The Secretary shall submit, within 1 year of the first full fiscal year after the date of enactment of this title and within 6 months of the end of each succeeding fiscal year, a report to Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes a report on the status of Indian forest lands with respect to standards, goals and objectives set forth in approved forest management plans for each Indian tribe with Indian forest lands. The report shall identify the amount of Indian forest land in need of forestation or other silviculture treatment and the quantity of timber available for sale, offered for sale, and sold for each Indian tribe.

(d) ASSISTANCE FROM SECRETARY OF AGRICULTURE.—The Secretary of Agriculture, through the Forest Service, is authorized to provide, upon the request of the Secretary of the Interior, on a nonreimbursable basis, technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by this title.

Government  
contracts  
Grant programs.  
25 USC 3112.

#### SEC. 313. ALASKA NATIVE TECHNICAL ASSISTANCE PROGRAM.

(a) ESTABLISHMENT.—The Secretary, in consultation with the village and regional corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), shall establish a program of technical assistance for such corporations to promote the sustained yield management of their forest resources. Such technical assistance shall also be available to promote local processing and other value-added activities with such forest resources.

(b) INDIAN SELF-DETERMINATION ACT.—The technical assistance to be provided by the Secretary pursuant to subsection (a) shall be made available through contracts, grants or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

25 USC 3113

#### SEC. 314. ESTABLISHMENT OF INDIAN AND ALASKA NATIVE FORESTRY EDUCATION ASSISTANCE.

(a) FORESTER INTERN PROGRAM.—(1) Notwithstanding the provisions of title 5 of the United States Code governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau of Indian Affairs at least 20 forester intern positions for Indian and Alaska Native students.

(2) For purposes of this subsection, the term "forester intern" means an Indian or Alaska Native who—

(A) is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields, and

(B) is appointed to one of the positions established under paragraph (1).

(3) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an approved post-secondary or graduate school in a full-time forestry-related curriculum.

(4) A forester intern shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for 2 years for each year of education for which the Secretary pays the intern's educational costs under paragraph (3) of this subsection.

(5) A forester intern shall be required to report for service with the Bureau of Indian Affairs during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement.

(b) **COOPERATIVE EDUCATION PROGRAM.**—(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose of recruiting promising Indian and Alaska Native students who are enrolled in secondary schools, tribally-controlled community colleges, and other post-secondary or graduate schools for employment as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise.

(2) The cooperative educational program that is to be maintained under paragraph (1) shall be modeled on and shall have essentially the same features of the program operated on the date of enactment of this title pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) Under the cooperative agreement program that is to be maintained under paragraph (1), the Secretary shall pay all costs for tuition, books, and fees of an Indian or Alaska Native student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement, and

(B) is interested in a career with the Bureau of Indian Affairs, an Indian tribe or a tribal enterprise in the management of Indian forest land.

(4) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under this subsection.

(5) A recipient of assistance under the cooperative education program that is to be maintained under this subsection shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for one year for each year for which the Secretary pays the recipient's educational costs pursuant to paragraph (3).

(c) **SCHOLARSHIP PROGRAM.**—(1) The Secretary is authorized to grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the



Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipient's forestry or forestry-related course of study, with

- (A) the Bureau of Indian Affairs;
- (B) a forestry program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination Act (25 U.S.C. 450 et seq.);
- (C) an Indian enterprise engaged in a forestry or forestry-related business; or
- (D) an Indian tribe's forestry-related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited postsecondary or graduate institution.

(d) **FORESTRY EDUCATION OUTREACH.**—The Secretary shall conduct, through the Bureau of Indian Affairs, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, a forestry education outreach program for Indian and Alaska Native youth to explain and stimulate interest in all aspects of Indian forest land management and careers in forestry.

(e) **ADEQUACY OF PROGRAMS.**—The Secretary shall administer the programs described in this section until a sufficient number of Indians and Alaska Natives are trained to ensure that there is an adequate number of qualified, professional Indian foresters to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for Indian tribes.

25 USC 3114.

#### SEC. 315. POSTGRADUATION RECRUITMENT, EDUCATION AND TRAINING PROGRAMS.

(a) **POSTGRADUATION RECRUITMENT.**—The Secretary shall establish and maintain a program to attract Indian and Alaska Native professional foresters and forester technicians who have already graduated from their course of postsecondary or graduate education for employment in either the Bureau of Indian Affairs forestry programs or, subject to the approval of the tribe, in tribal forestry programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian and Alaska Native professional foresters or forestry technicians in exchange for the Secretary's assumption of the employee's outstanding student loans. The period of employment shall be determined by the amount of the loan that is assumed.

(b) **POSTGRADUATE INTERGOVERNMENTAL INTERNSHIPS.**—For the purposes of training, skill development and orientation of Indian, Alaska native, and Federal forestry personnel, and the enhancement of tribal and Bureau of Indian Affairs forestry programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal, Indian, and Alaska Native forestry personnel. Such program shall—

- (1) for agencies within the Department of the Interior—
  - (A) provide for the internship of Bureau of Indian Affairs, Alaska Native, and Indian forestry employees in the forestry-related programs of other agencies of the Department of the Interior, and
  - (B) provide for the internship of forestry personnel from other Department of the Interior agencies within the

Bureau of Indian Affairs and, with the consent of the tribe, within tribal forestry programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau of Indian Affairs and, with the consent of the tribe, within a tribal forestry program of other forestry personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian and Alaska Native forestry employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) **CONTINUING EDUCATION AND TRAINING.**—The Secretary shall maintain a program within the Division of Forestry of the Bureau of Indian Affairs for the ongoing education and training of Bureau of Indian Affairs, Alaska Native, and Indian forestry personnel. Such program shall provide for—

(1) orientation training for Bureau of Indian Affairs forestry personnel in tribal-Federal relations and responsibilities;

(2) continuing technical forestry education for Bureau of Indian Affairs, Alaska Native, and tribal forestry personnel; and

(3) developmental training of Indian and Alaska Native personnel in forest land based enterprises and marketing.

**SEC. 316. COOPERATIVE AGREEMENT BETWEEN THE DEPARTMENT OF THE INTERIOR AND INDIAN TRIBES.** 25 USC 3115.

(a) **COOPERATIVE AGREEMENTS.**—(1) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements with Indian tribes to—

(A) engage in cooperative manpower and job training and development programs,

(B) to develop and publish cooperative environmental education and natural resource planning materials, and

(C) to perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

The Secretary may enter into such agreements when the Secretary determines the public interest will be benefited.

(2) In such cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of section 3324, title 31, United States Code, relating to the advance of public moneys.

(b) **SUPERVISION.**—In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of section 2671 through 2680 of title 28, United States Code, and section 8101 through 8193 of title 5, United States Code.

(c) SAVINGS CLAUSE.—Nothing in this title shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

25 USC 3116  
Regulations

SEC. 317. OBLIGATED SERVICE; BREACH OF CONTRACT.

(a) OBLIGATED SERVICE.—Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this title, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) BREACH OF CONTRACT; REPAYMENT.—Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

25 USC 3117

SEC. 318. AUTHORIZATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

25 USC 3118

SEC. 319. REGULATIONS.

Except as otherwise provided by this title, the Secretary is directed to promulgate final regulations for the implementation of the title within eighteen months from the date of its enactment. All regulations promulgated pursuant to this title shall be developed by the Secretary with the participation of the affected Indian tribes.

25 USC 3119

SEC. 320. SEVERABILITY.

If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this title shall not be affected thereby.

25 USC 3120

SEC. 321. TRUST RESPONSIBILITY.

Nothing in this title shall be construed to diminish or expand the trust responsibility of the United States toward Indian forest lands, or any legal obligation or remedy resulting therefrom.



The CHAIRMAN. There can be no doubt that Indian forests are vital to Indian communities. Indian people depend on the healthy condition of their forests for physical, financial cultural and religious needs. Indian forests are essential to cultural and religious practices because they serve as places for gathering native medicines and foods. The economic returns from Indian timber productions help alleviate the pervasive poverty and unemployment on Indian reservations.

Indian forests and woodlands comprise about 20 percent of the lands held in trust by the United States for Indian tribes. Indian forests comprise nearly 16 million acres on 214 reservations. Of this amount, 5.7 million acres are commercial forest lands, and 8.7 million acres are woodlands.

Indian forests constitute an important economic asset that benefits both Indians and non-Indians alike. In 1991, the BIA estimated that Indian forests and related programs generated over \$465 million and supported 40,000 jobs. Of this total over \$180 million and 9,000 jobs benefited non-Indians in areas adjacent to reservations.

Indian timber resources also contribute substantially to meeting the national market demands for timber. In the 5 years since the passage of this act, the BIA is yet to issue regulations implementing the Act. As the trustee for Indian forest lands, it's unconscionable that the BIA has failed to promulgate regulations implementing this act.

When this act was passed, it was estimated that over \$300 million in tribal revenues were lost due to poor management practices in the previous 10 years. It was also estimated that over 7 million board feet of Indian timber were lost between 1987 and 1988 due to illegal trespass. The failure to promulgate regulations continues to endanger Indian forest lands by increasing their vulnerability to further mismanagement and timber theft that will result in significant ecological damage and lost revenues to Indian tribes. Simply put, this is yet another case where the BIA has failed to meet its trust obligations to Indian tribes.

I'm pleased with one specific outcome from the act, and that is, the completion of the comprehensive study of Indian forest lands by the Indian Forest Management Assessment Team [IFMAT]. The IFMAT report reveals that funding for tribal forestry management is far below the levels of investment for Federal and private forest lands. The IFMAT team found that the level of investment per acre in Indian forests was half that of private commercial forests.

Furthermore, national forests received one and one half times the level of Federal investment than Indian forests. In reports to the committee, the General Accounting Office [GAO] found that many tribes with significant forest resources still lack forest management plans, and most Indian tribes did not have an effective method of monitoring the management of their timber resources.

Recent figures highlighting the funding for Indian forestry evidences the growing disparity between what is invested in national forest land and what is spent on Indian forest land. During the period of 1993 through 1995, Indian forest lands received less than one-half the level of Federal investment per acre in U.S. Forest Service land. Over the same period, Indian forest lands received

one-fifth the level of Federal investment per acre in BLM forest lands.

In fiscal year 1995, the BIA received approximately \$44 million for the management of 16 million acres of Indian forest lands. The Federal Government invested \$2.78 per acre in these Indian lands. Yet, for the Forest Service, the Federal Government invested \$5.58 per acre and for the BLM the Federal Government invested \$13.68 per acre. What is clear is that the passage of the National Indian Forest Resources Management Act has done little to change the disparity between our Government's investment in Indian lands and its investment in other Federal lands.

Things don't appear much brighter for the future of Indian forests given the magnitude of cuts proposed in tribal priority allocations for next year. In fact, under the proposed cuts in the 1996 Interior budget, the disparity between investments in Indian forests and Federal forests will continue to grow. While the Senate has recommended overall cuts of 8 percent for BLM and 11 percent for the U.S. Forest Service, tribal forestry programs are slated to receive a whopping 25 percent reduction. Funding for tribal forestry programs will drop from \$25 million to \$19 million. This will amount to approximately \$1.18 per acre for tribal forest lands.

Clearly, the act is not achieving its intended purpose. I recognize the administration is under the gun with the current proposed funding cuts that will strike at the heart of reservation programs and eliminate many essential services to tribal members. I believe it is imperative that this administration take every possible step to ensure the expeditious implementation of this act.

We cannot continue the practices of the past that have resulted in the loss of millions of board feet of Indian timber and the loss of millions of dollars in tribal revenues. We must continue to push forward and work together to achieve full implementation in the act.

In closing, I wish to extend a warm welcome to all of our witnesses. I know several of you have labored over many years to spearhead the efforts to bring Indian forestry issues to the forefront. I know that you have traveled great distances to be here, because this matter is of longstanding importance to you.

I especially want to express my appreciation to Professor John Gordon for appearing before the committee this morning and for taking time out of your busy schedule. I understand that Professor Gordon presided as chairman of the Indian Forest Resources Management Assessment Team and is present to share the findings from their assessment of Indian forest lands and management activities. I appreciate the attendance of today's witnesses. I look forward to hearing their testimony.

With that, I would like to welcome Professor Gordon. Welcome, Professor Gordon.

**STATEMENT OF JOHN C. GORDON, PINCHOT PROFESSOR OF FORESTRY, SCHOOL OF FORESTRY AND ENVIRONMENTAL STUDIES, YALE UNIVERSITY, FORMER CHAIRMAN OF INDIAN FOREST MANAGEMENT ASSESSMENT TEAM**

Mr. GORDON. Thank you, Senator.

I did serve as a member and chairman of the IFMAT, which reported to the Intertribal Timber Council on the status of Indian forests and their management in November 1993. I'm going to present here a brief summary of our findings and recommendations. There is considerably more detail available in the executive summary in the full report, which we have submitted.

The title of our report was *An Assessment of Indian Forests and Forest Management in the United States*, and our team included forest ecologists, silviculturists, engineers, wildlife and fishery specialists and forest planning experts in forest planning and social science.

In addition to the economic statistics which the Senator gave in his opening remarks, I point out that Indians live with the environmental and economic consequences of their forest management perhaps more intimately than most other people in the United States. They directly experience the impacts of timber cutting practices, prescribed fire, grazing and other potentially controversial or contentious activities. They often see the direction relationship between tribal revenue and the economic use of their forests. And for this reason, we think Indian forest and forestry have the potential to serve as a model for other kinds of forest management.

I will now highlight what I consider to be our most important findings. First, tribal members and leaders place a high value on forest resource protection, and prefer an integrated approach be taken to managing all forest resources. They recognize that the forest supports many uses and values. They understand their forests and want to keep them healthy while using them.

Second, few tribal members or BIA foresters believe that current forest resource management on Indian lands is good or excellent. Areas that seem to be most in need of improvement were grazing, recreation, water, non-timber forest products and protection from pollution waste, poaching, and as the Senator mentioned, trespassing, among others.

Third, the administrative relationship between the U.S. Government and each tribal government is the key factor affecting the ability of the tribes to meet their forest management goals. Trust responsibility in relation to forests has not been clearly defined and this makes communication about it difficult and the evaluation of the adequacy of forest management even more difficult.

Tribal governments have embraced the concept of self-determination and increasingly are assuming more of the forestry functions previously performed by the BIA. Parallel BIA and tribal lines of authority undermine the prospects for coordinated forest resource planning and management. The fact that technical assistance and trust oversight have been mostly vested in one agency of the Government, that is, the BIA, has made it difficult to obtain impartial assessment of the quality of this assistance and guidance.

Fourth, and perhaps most serious, Indian forestry is underfunded and understaffed, compared with forestry on similar Federal and private lands. Current total funding for Indian forestry is only 63 percent and when I say current, I'm saying current as of the time of our report in 1993.

It appears to have gotten worse since then. Sixty-three percent of that for timber production on the national forests, and only 50



percent of that for timber production on private forests in the Pacific Northwest. And it's only 35 percent of that for coordinated forest resource management for the national forests.

And that's really the relevant figure. The 35 percent means one-third is allocated to managing all resources on Indian forests of that allocated to management national forests. And the comparison is more pejorative when it's made with private land.

Professionally trained foresters and professionally trained road engineers are in especially short supply. And the condition of many reservation roads reflects this. The number and variety of BIA technical specialists is not adequate for coordinated resource management, in which all resources are considered protected, and their grade levels are lower than for similar positions in the Forest Service and the Bureau of Land Management.

Fifth, managers of Indian forests are practicing more ecosystem management now than in the past. Despite funding and staffing difficulties, many Indian forests are places of experimentation and innovation. Some of the most highly developed uneven-aged management, for example, anywhere, is found on Indian forest lands. Tribes and the BIA do not have sufficient access to research tailored to their needs to consolidate and improve upon the gains they are making, however.

Sixth, the health and productivity of Indian forests are mixed and vary by forest type and location. We think they will remain in good condition for about 10 years. But there are health problems, there are increased use pressures and unless these are met, this window will close.

Seventh, roads have contributed to a number of environmental problems and would themselves demand and substantial investment for improvement.

Eighth, opportunities do exist to substantially increase income and benefits from timber harvests, for example, by integrating forestry and the activity of forest enterprises.

Ninth, coordinated forest management plans have the potential for serving tribes well, but low funding and inadequate personnel limit their usefulness.

And finally, some things we didn't address in the IFMAT report in any detail, allotments and the Alaskan Native corporations require special planning and management.

So to summarize our findings, we found four significant gaps. First, the gap between the visions that Indians express for their forests on the one hand and how these forests have been managed on the other hand. Second, the gap in funding between Indian forests and comparable, and I stress comparable, Federal and private lands. Third, the lack of coordinated resource planning and management, and fourth, the need for a better method of setting and overseeing trust standards for Indian forestry.

Now, our recommendations based on these findings are as follows. Our major overriding recommendation is to redefine the U.S. Government's role in discharging its trust responsibility, so that tribal governments have primary responsibility for directing Indian forestry. The U.S. Government can and should provide financial support, technical assistance, research access and trust oversight.

Technical assistance and trust oversight should be independent of each other.

This new arrangement should reflect these principles, and we've offered a more detailed potential model in our report. Each tribe would craft, implement and monitor a coordinated resource management plan consistent with their vision for their forests and forest management.

Standards for meeting trust responsibility would then be agreed upon between the tribal government and the Secretary of the Interior as part of the coordinated resource management planning process. BIA forestry and resource management should be reorganized to provide technical assistance and trust oversight should be moved to an independent commission.

Technical assistance for tribes should include full support for coordinated resource planning and management and also research access. And a single manager should be responsible for delivering the entire natural resource program at the local or tribal level. The transition to the new system should be governed by the individual tribes and their levels of comfort.

Now, we had several supporting recommendations. First, the development of tribally defined trust standards that are easy to monitor and that clarify oversight. Second, an increase in baseline funding and investment for Indian forest management to levels comparable with the national forests, which would still not bring them into comparability with private lands. This would require an increase in 1993 dollars of \$121 million a year for Indian forestry.

Third, protect the health and productivity of Indian forests through the further implementation of ecosystem management and more thorough silvicultural prescriptions that include a broader array of resources. Fourth, bring staffing levels to parity with those of the national forests, having similar resource management objectives, that is, to those national forests which are comparable.

Fifth, increase tree value through improved forest management, timber harvest and forest enterprise performance. Sixth, greatly strengthen coordinated forest resource planning and natural resource inventory, and this will require the kind of staff changes that I mentioned earlier. And seventh, address the issues requiring special planning and management that our report didn't cover in any thoroughness, that is allotments, Alaska, Federal lands within reservation boundaries that are not yet reservation lands, and off-reservation treaty right lands that should be included as part of any coordinated planning process.

So to close, let me briefly summarize our recommendations. Management of Indian forests can be substantially improved by reconfiguring the relationship between the U.S. Government and tribal governments, supported by increased funding and other measures. These actions place Indians firmly in control of their forests and provide technical and financial means for them to reach their vision for these lands.

We believe that considerable management flexibility still exists on Indian forest lands where many innovative approaches are already being tried. Further, we believe that others have much to learn from Indian forestry and the holistic Indian view of forests and people.

But it is urgent that more attention and resources be directed soon to Indian forests by Congress. Otherwise, options will be irretrievably lost, and with them a major opportunity to bring Indian forests up to management standards of Federal lands such as the national forests, and to provide widely useful examples of integrated forest management.

Thank you. It's an honor to be here.

The CHAIRMAN. Thank you very much, Professor. And I want to thank you for the hard work of you and your commission in developing this report. By the way, it looks like you had some pretty enjoyable experiences along the way, from the pictures, I might add. Maybe next time I can go along as a technical adviser.

Mr. GORDON. We hope so.

The CHAIRMAN. Or maybe the most non-technical adviser.

I'm looking on page ES-16 at your chart, recommended chart for reorganization.

Mr. GORDON. Yes.

The CHAIRMAN. It is part of this, I might say, excellent report. It shows a picture of—yes. On that chart, which by the way I might say is in consonance with my whole concept of Indian self-government and self-determination, the whole thrust of what we've been trying to do, which is to give the funds and the responsibility to the tribes and reduce the size and responsibility of the BIA and make them basically what you're talking about here as far as forestry is concerned, a technical assistance and research agency.

Where in this diagram does the issue of endangered species, other Federal laws that would affect forestry, including, like in the case of Arizona, a judge's decision come into play here? Where does that enter into this process?

Mr. GORDON. The principal place in this diagram is in the creation of the coordinated resource management plans. The hope is that by that sort of planning, all resources, including endangered species and indeed wildlife generally, which is often a contentious issue, can be best dealt with. And so when the agreement is reached on the coordinated resource management plan for a given tribe, between the U.S. Government and the tribal government, those issues should have been taken into account and settled.

The CHAIRMAN. Now, if this diagram were applicable today, would we replace that block, given today's scenario, would we replace that block that says tribal government, would that say BIA?

Mr. GORDON. Well, in some cases yes, and in some cases no. In some cases, almost all forest management is carried out by the Bureau. In a few other cases, at least, it's all carried out by the tribe. Mostly it's a mixed model. And we think that leads to some confusion and duplication, and in other instances, lack of proper expertise to do the coordinated resource management planning.

The CHAIRMAN. Has that got to do with the policy of the area office? I mean, how else would you account for, in some tribes you would have relative independence, and in the other tribes you would have total control exercised by the BIA?

Mr. GORDON. As you know, there's a lot of difference between tribes. Some of it is tribal preference. Some of it is tradition. Some of it is BIA-driven. It's just different in every case.



But we think the similar principles are the need for coordinated planning with the tribal government firmly in charge of that, and the need for independent oversight. If the same people deliver the technical assistance or in many cases the whole management program and are at the same time responsible for overseeing that process, it puts those people in a terrible position. So those, we think, have to be separated.

The CHAIRMAN. There have been allegations that some tribes are over-cutting some of their forests. Did you see any evidence of that in your travels?

Mr. GORDON. Without a coordinated resource management plan, that clearly states goals for the tribal forests, it's impossible to tell whether cutting is over or under. And so I can't say that we really did, no.

The CHAIRMAN. There are allegations that some tribes are not respecting Endangered Species Act, other laws and judicial decrees that are handed down. Did you see any evidence of that?

Mr. GORDON. No.

The CHAIRMAN. No; by the way, I also very much appreciate your comments about the funding. That's clearly a very important issue.

Let's suppose that we don't get the level of funding that is necessary to provide the same kind of management and oversight that exists on BLM and Forestry lands. Do you have any ideas as to what we can do then?

Mr. GORDON. I think moving in this same direction, albeit more slowly, would be the alternative. I think it will be a tragedy if we don't make this transition in this 10-year window when the forests will still be able to respond well. But I think this is the direction regardless of the level of funding.

The CHAIRMAN. The committee has been notified that the comparisons that you have made and we have made about the amount of money and oversight spent, the money funds spent on national forests versus Indian land may not represent fair and meaningful comparisons, because the Forest Service manages its forests more intensively and utilizes different timber production practices than the BIA. Do you think there's any validity to that comment?

Mr. GORDON. Not so far as our comparisons are concerned. Of course, there are differences among national forests and between national forests and some reservations in both management objectives and techniques.

But we worked hard to try to make comparisons that made sense, that is, that were on comparable timber types, ecological situations and for similar goals. We were often told particularly in western reservations by BIA that economic production was the principal thing.

So we thought it fair to compare those with private lands and Forest Service lands where timber production predominated. The problem comes that to do timber production these days you have to have a coordinated resource management plan that takes into account other resources or you get in trouble with the timber program.

So probably the spending should approximate the national forests, which after all are forests held in trust for all the American

people. And I don't see any reason why it should be different in general.

The CHAIRMAN. Senator Wellstone asked me to ask you this question. Given the funding and staff reductions facing the tribes and BIA, what approach and/or priority would you recommend to the tribes and BIA in managing Indian forest resources? That's sort of along the lines of the question I just asked you.

Mr. GORDON. Yes; and I'd give approximately the same answer. I think the coordinated resource planning approach is the only one that's appropriate in modern times given the, among other things, legal framework that you mentioned. And I think moving toward that as rapidly as funds and expertise will allow is the right track.

The CHAIRMAN. Can you think of any rationale for the BIA's failure to issue regulations after a period of 5 years?

Mr. GORDON. We didn't look into that.

The CHAIRMAN. Well, it's not the first issue, a law that we've passed, that these same kind of dilatory tactics have been employed.

I guess finally, some would allege, and as you know, there's a very contentious environment, an emotional environment, as regards to United States-Indian relations out there. Some would allege that because these forests are owned by the Indians, therefore they should help fund the oversight and resource management of these forests. Do you have any comment on that?

Mr. GORDON. Well, they do indeed help fund it. And in some instances, are the principal funders. I think the trust responsibility demands an arrangement something like the one we diagrammed, where the responsibility is shared but the tribes lead.

The CHAIRMAN. Well, I want to thank you and your organization for the outstanding job that you did, and that the team did. And I think it helped significantly, and it certainly clarifies the situation.

And it just seems to me, in all candor, that if we're going to make progress in that area, we've got to set up the kind of oversight and management of these vital and in some cases irreplaceable resources with the kind of block diagram and organization that your team has recommended.

And I want to assure you that I'll make every effort to see that that's put in place. We give great lip service to the concept of tribal sovereignty, but then when it comes to giving the actual responsibility and funding to the tribes, we don't seem to be able to do that.

I appreciate all of your efforts and I appreciate your being here this morning. And I'm afraid we may be calling on you again.

So thank you very much, Professor Gordon.

Mr. GORDON. Thank you.

The CHAIRMAN. Our next witnesses are Jaime Pinkham, who's the president of the Intertribal Timber Council in Portland, OR; Gary Morishima, who's the technical adviser to the Quinault Indian Nation; Terry Virden, who's the acting director of the Office of Trust Responsibility of the BIA, who is accompanied by Arch Wells, who's the acting chief, Division of Forestry. Please come forward. Welcome.



Mr. Pinkham, we'll begin with your statement. As all of you know, your complete statements have been made part of the record and you are free to summarize in any way you feel necessary, and we may be interrupted by votes this morning. But if so, I'll run over and run back. And I ask your indulgence in that event.

Good morning, Mr. Pinkham.

### **STATEMENT OF JAIME PINKHAM, PRESIDENT, INTERTRIBAL TIMBER COUNCIL**

Mr. PINKHAM. Good morning, Senator.

Mr. Chairman and members of the committee, I'm Jaime Pinkham, president of the Intertribal Timber Council [ITC]. As well, I'm the natural resource manager for the Nez Perce Tribe in Idaho.

The ITC is a 19-year old affiliation of 60 timber-owning tribes and Alaska Native organizations dedicated to improving the management of our forest resources. And on their behalf, it's an honor to report to the committee on the implementation of the National Indian Forest Resource Management Act, or NIFRMA.

It has been a particular source of gratification that, at the invitation of this committee, the ITC was asked early in the process to participate in the development and consideration of NIFRMA, which became law in 1990. And Chairman McCain, we applaud your efforts and your leadership in getting this act passed through the Congress, and your dedication to Indian resource issues.

Now, from our perspective this act is a model piece of legislation. You offered the tribes and the ITC frequent opportunities for consultation in developing the bill, and you listened carefully to the comments and concerns at every stage of the bill's consideration. And the result, we believe, is the single most important statute enacted in the history of Indian natural resources generally, and forestry in particular.

The act creates a comprehensive statutory framework for Indian forests. It specifically acknowledges the Federal trust responsibility, recognizes tribal primacy in directing our forests, and accommodates diversity in forest management regimes. It provides clear guidance on tribal participation and forest management expenses, and is forward-looking, covering forestry education and a prospect of integrated resource management.

NIFRMA principally pursues the improvement of Indian forests through incorporating tribal goals and objectives into each tribe's forest management plan, along with the description of requirements to accomplish those goals and criteria for monitoring and evaluating its progress. And then BIA is required to report to Congress every year on that progress.

Additionally, the act authorized an independent assessment every 10 years to provide a professional and impartial measuring stick against which the status of Indian forests can be broadly gauged over time. And following the Act's enactment, the ITC was awarded the responsibility of setting up the initial IFMAT review. Dr. Gordon just testified to you on the IFMAT report, and Dr. Morishima will be testifying on how the assessment was established and how its report is being followed up.

Mr. Chairman, the IFMAT report is a first-ever independent review of Indian forestry. Its on schedule completion was an important step in implementing NIFRMA.

NIFRMA, a complex act in its implementation, is multi-faceted. And some of its provisions are the statutory recognition of activities already performed by the BIA's forestry program.

And yet some of it has new provisions which are already being implemented, such as IFMAT, the Indian Forest Land Assistance Accounts, the direct payment of tribes of timber receipts, and the annual BIA forest management status report to Congress. And some of NIFRMA's provisions, by their very nature, will require many years to be fully realized, such as the measurement of management plan compliance.

But full implementation of the act is being frustrated on two fronts. One, the final publication of the regulations and second, insufficient appropriations. Although the tribes, the ITC and the BIA worked diligently on the regulations, other branches of the Interior Department and the administration have repeatedly delayed their progress.

The Office of Management and Budget [OMB] delayed the regulations many months by trying to subject the act's provision, including the trust responsibility, to the availability of appropriations. But that and other obstacles were overcome, so that in the spring of this year, the regulations were cleared for final publication and implementation, or so we thought.

About 1 month ago, the Interior Department's Office of Regulatory Affairs unilaterally determined, apparently as part of re-inventing Government, that the forestry regulations must be converted into plain English. And supposedly, this was supposed to be a neutral conversion.

But when the BIA provided us a copy of the regulatory affairs plain English translation last week, just an initial review has shown considerable substantive changes. Entire provisions have been dropped, and the intention and effect of others have been altered. And Chairman McCain, many of these regulations are technical in nature and have been worked out in long and detailed discussions between the tribes, the BIA and the solicitors.

And now after 5 years, it is to us absurd that in the name of re-inventing Government, the Office of Regulatory Affairs is moving forward with these changes without consultation, or even notification to the tribes, and further delaying the regulations. We feel this is intolerable, and we are requesting that the plain English effort be set aside.

We will work with the Office of Regulatory Affairs on format changes, but for the most part, the regulations as submitted should not be rewritten. And if necessary, we may ask this Committee's assistance in this effort to ensure these regulations are expeditiously sent to final publication.

But even if we can promptly get the Act's regulations in place, even with IFMAT, and with the best efforts of the tribes and ITC, the prospect of improving Indian forestry is on the verge of being thwarted by the drastic and disproportionate cuts being proposed in the fiscal year 1996 Interior appropriations. And I'm not going

to dwell on appropriations, but for this Committee, for the hearing record, and for history, I'm compelled to issue these comments.

It's well documented that Indian forestry is already substantially underfunded. Even today, we can only afford a very basic forestry program. And over the years, this disparity has been compounded by an unyielding flood of Federal regulatory mandates being imposed upon our forest lands. And now we are anticipating a 25-percent forestry program cut, while looking at the Forest Service and the BLM's cuts of only 11 and 8 percent, figures that you pointed out earlier.

And Chairman McCain, we and all tribes are deeply grateful for your continuing efforts, along with Senators Domenici and Inouye, to ease these cuts. But given the Federal obligations of the tribes' treaties and the trust responsibility, they should have never been proposed in the first place. The arguments used to defend them are disingenuous. And they are an affront to the tribes, as well as to the honor of the United States.

But in the end, we realize that we will have no choice but to try to get by with what is finally appropriated. And even in that circumstance, NIFRMA, when its regulations are fully promulgated, will be of assistance to the forestry tribes. But its true potential will have been choked off.

And despite the foreclosure of opportunity, we will continue to try to improve our forests according to our visions. Indian tribes will not quit. Because nature remains our caretaker, the caretaker of our people. Often saddled with poverty, our forests must be maintained as places to gather sustenance and spiritual strength.

And to conclude, Chairman McCain, Indian tribes are here to stay. We will not sell our land or shear down our forests during waverling economic times, and relocate our operations elsewhere. Our ancestors and our culture is committed to the lands upon which we live.

And thank you for this opportunity to appear before you today. [Prepared statement of Mr. Pinkham appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Pinkham.

Before we go to Mr. Morishima, I think you should know, yesterday I sent a letter to Assistant Secretary Deer expressing my deep concern over the delays in promulgating regulations. It is interesting that a requirement to write regulations in plain English should delay the promulgation of regulations. I guess the law of unintended consequences prevails here as well. But I asked her to get these regulations out as soon as possible.

I also want to assure you and other members of the panel, we will continue our efforts to restore funding. We will not quit on the issue. And no matter what happens this year, we will not give up the fight. And my message to tribal leaders has been that you should seek self-governance, the mechanism is there, the laws that we passed both in 1987 and last year.

And also we are going to have to make sure, through self-governance, that the taxpayers dollars that are earmarked for Native Americans actually reach a tribal member. When in the estimates of some as few as 10 cents out of every dollar that are expended for Native Americans ever reaches the hands of a tribal member, then we have the obligation to make that system far more efficient.



I don't know of a better way than self-governance, along the lines of what, frankly, what Professor Gordon's team recommended. And I think that has to take place throughout Indian country. Because we can no longer be satisfied with a situation where so little money actually does the work that it's intended to do. And I'm sure you appreciate that aspect of the problem.

But that does not in any way mitigate the fact that we are now abandoning our solemn treaty obligations, in my view, by the cuts that have been enacted. And I wanted to respond, because in your full statement, which I read last night, there's frequent and understandable references to this problem.

Mr. PINKHAM. Thank you, Senator.

The CHAIRMAN. Mr. Morishima, welcome.

#### STATEMENT OF GARY S. MORISHIMA, TECHNICAL ADVISER, QUINAULT INDIAN NATION

Mr. MORISHIMA. Thank you, Senator. It's a pleasure to be before the committee today.

NIFRMA represents an extremely useful model of partnership between the Congress, between the administration and between tribal governments. It's a partnership that began with the development of the necessary legislation and is now proceeding and progressing toward implementation.

My testimony today is going to concentrate on three major areas of ITC's involvement in implementing the Forestry Act. First, the process that was employed to develop the implementing regulations, second, ITC's experience with the IFMAT, and last, the status of some tribal efforts to consider and implement the appropriate recommendations from IFMAT.

In terms of the process of developing regulations, those regulations were developed through a collaborative process between the BIA and tribal governments. The enactment of NIFRMA itself provided an opportunity to correct longstanding problems and streamline processes of administration of Indian forest resources.

The actual implementation of many of these improvements, however, has awaited publication and adoption of the final forestry regulations. And as Mr. Pinkham has indicated earlier, although the substantive work on the development of these regulations has been completed for some time, numerous administrative hurdles have delayed implementation.

Now, just yesterday, Mr. Pinkham and I had an opportunity to meet with the Office of Regulatory Affairs in Interior to express our concerns that the effort to translate these technical subject matters into plain English would further delay implementation of NIFRMA and undermine the efforts of the joint BIA-tribal teams that worked so hard to develop those regulations.

Based upon that meeting yesterday, I'm very hopeful, Mr. Chairman, that that office will work with us to expedite publication of the regulations without further attempts to convert them into plain English form. This will permit the regulations to develop through the BIA-tribal collaborative process to be put into effect at the earliest possible time.

The second topic I want to address is the process that we established to help support the efforts of the IFMAT team. NIFRMA

mandated that the status of Indian forest resources be independently reviewed to address concerns that have been expressed within the Indian community and by the BIA.

That first assessment was to be completed in 1993, and subsequent reviews are to be conducted at 10-year intervals. The funding to perform the first assessment was provided by a combination of appropriations, funds from the BIA forestry program and a grant from the administration, for Native Americans. The ITC requested and identified seven nationally recognized experts to serve on IFMAT to conduct the first assessment.

To help in this process, the ITC established a three-member liaison committee to facilitate IFMAT's review and to help arrange site visits. The charge that ITC gave IFMAT was simple. We showed the team a map, told them,

Provide us with an assessment of the current status of Indian forestry, don't focus on the past, but on the present and the future. Tell it like it is. We want to know what's right and what's wrong. But most of all, we want your advice on how we can make things better.

The challenge confronting IFMAT was enormous, with the diversity of tribal cultures, economies and forests involved. But from our perspective, the independence of IFMAT from either the BIA or tribal control was invaluable. The lack of preconceptions and biases added credibility to its insights, findings and recommendations.

In terms of what's next, shortly after IFMAT's report was issued, the ITC initiated a review of the report's findings and recommendations. We identified initial priorities and distributed a survey to tribal communities to obtain their opinions and views. And just this last May, the ITC revised its vision statement regarding the future of Indian forestry to reflect and incorporate tribal and BIA comments and views regarding IFMAT's report.

The IFMAT report contained well over 50 recommendations. Some of them require congressional action such as appropriation of substantial funds to correct deficiencies. But while we believe that additional funding is necessary to fulfill trust obligations of the United States for management of Indian forest resources, much of ITC's efforts pertaining to IFMAT to date have been forced to focus on measures that can be taken without congressional action or the infusion of substantial amounts of additional money.

I do not want to leave this committee, however, with the impression that the recent budget reductions and limitations can easily be overcome. Many of the things that we have been examining within the ITC constitute sort of fiddling around the edges while the body gets eaten away.

Unfortunately, the amount and level of reductions that we're looking at now have the potential to undo the progress that's been made toward self-determination and self-sufficiency over the last few decades. We're going to have reduced access to Indian resources. We're going to be losing very dear planning, management and evaluation capabilities. We're going to be facing reduced productivity of our resources and increases in future dependency and we're going to be facing the prospect of retrocession of many of the responsibilities for management of these resources back to the BIA.

I'd like to proceed now with one of the most useful aspects of IFMAT, in my view. And that was really the opportunity to broad-

en perspectives and opening the way for looking at new ways of doing things and for improving the management of Indian resources. I'd like to identify a few of those for the committee's consideration.

First, there are some opportunities to reduce costs and increase and improve efficiency. And IFMAT identified many of those for consideration of the tribes. One of them is the ability to increase the efficiency and utilization of the timber that is harvested. And the ITC has begun to implement a series of quality control workshops around the country to identify specific potentials to achieve that end.

Second, there are opportunities to reduce costs of operations. We can develop all-weather road systems and do things like decrease central tire inflation to reduce the sedimentation and wear and tear on our road systems. Thirdly, we can potentially increase the economic returns through developing innovative ways of pooling resources to market forest products.

Fourth, we can make more effective use of the funds that are available for management analysis and planning by redirecting some of our continuous forest inventory programs and geographic information systems. Last, there are ways in which we could improve the efficient delivery of technical services to improve returns and make more funds available to tribes for on-the-ground management, by identifying ways to do the job better, faster, cheaper and more effectively.

Second, I'd like to point out that the IFMAT report also provided an opportunity for tribes to identify and understand that opportunities exist for tribal-Federal cooperation through organizational means. First, current regulations and guidelines established within the Department of Interior impair personnel movement between tribal and BIA employment systems. It may be possible to work on development of a consolidated tribal-BIA health-retirement benefits package that would help address this problem.

Third, tribes may be able to reduce costs of programs such as workers compensation and accident insurance programs by creating pooled risk self-insurance programs for enterprises and field forestry operations.

Last, Mr. Chairman, I think that tribal programs could benefit quite substantially by relief from burdensome regulations and requirements that devour the limited resources that are available for resource management in Indian country and reduce the opportunities for tribes to increase self-sufficiency. Philip Martin, the first councilman of the Quinault Nation, recently told me,

The Feds are always asking us to pull ourselves up by our bootstraps and become more sufficient. But they've tied our hands behind our backs and nailed our feet to the floor.

At many locations, we believe the costs can be reduced while enhancing the effectiveness and efficiency of tribal forestry programs through land consolidation. Yet current regulations pertaining to fee to trust transfers, and encumbering trust lands, act to inhibit our investment capabilities and land consolidation efforts.

Second, tribal lands are subjected to numerous unfunded mandates that do not apply to private lands. The limited funds available for forest management could be much better invested in im-



proving the management and productive potential of Indian forest resources. Thirdly, at some locations, like at Quinault, for our north boundary lands, export restrictions have reduced the value of our timber by well over two-thirds in order to provide local processing capabilities to benefit local economies.

Next, transaction costs and timeframes that are associated with timber sales and processes established by regulation have reduced our ability to take advantage of and respond to changing market conditions. And last, the whitetape of bureaucratic administrative processes has stifled access to and utilization of several Federal programs by tribal governments.

In the Pacific Northwest, we have been experimenting with a one-stop shopping concept that could provide a useful model for institutionalizing participatory, cost-efficient, cost-effective and outcome driven approaches to development and management of natural resources.

Ultimately, we may be back before the Congress asking for your help to eliminate some of these roadblocks that stand in our way of increasing tribal development and utilization of trust assets.

Enactment of NIFRMA has resolved many critical, longstanding issues and set the stage for improving the management of Indian forests and other natural resources. Equally important, it has presented new ideas and opportunities for tribes to investigate and creatively resolve problems that stand in the way of their ability to improve the management of their resources so as to benefit their own communities.

IFMAT has provided us with an independent view of the status of Indian forestry and a solid foundation for moving forward. But tribes must now decide what path to take as they move into tomorrow.

Thank you for your kind attention, and I'd be pleased to answer any questions that may be raised by my testimony today.

[Prepared statement of Mr. Morishima appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Virden.

**STATEMENT OF TERRY VIRDEN, ACTING DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES AND CHIEF FORESTER, BIA, ACCOMPANIED BY ARCH WELLS, ACTING CHIEF, DIVISION OF FORESTRY**

Mr. VIRDEN. Good morning, Mr. Chairman, members of the committee.

I am Terry Virden, acting director, Office of Trust Responsibilities, and Chief Forester, for the BIA. It is my pleasure to come before you today to report on the progress we have made in the implementation of Title III of Public Law 101-630, the National Indian Forest Resources Management Act.

Although much progress has been made in implementing this title, I am concerned that just as it is about to produce benefits to tribes, the Senate's proposed cuts for BIA programs will effectively kill the Indian Forest Management Program. We expect many components, such as the forestry education assistance program, will have to be discontinued or reduced significantly. The resulting loss

of personnel at all levels will further hamper our ability within the BIA and at the tribal level to carry out our current functions.

In the field, cuts to the tribal priority allocation program will result in fewer timber sales and fewer forest development projects, which will mean less revenue on and near the reservations. Reservation timber sales represent income for both Indian and non-Indian communities. With the projected cuts, we expect our forestry staff to be severely reduced. Also, we would be unable to support the annual Intertribal Timber Council symposium. This could result in our taking a step backwards by making it much more difficult for tribes to participate and have meaningful input in policy and in the future direction of the program.

I'd like to go over our regulation writing process. In January 1991, a regulation drafting team comprised of tribal and BIA members was formed. Four regional scoping meetings were held that winter and spring with our draft of the proposed rule ready for BIA and Departmental review by December 1991.

The review process continued from January through April 1992 with the Assistant Secretary of Indian Affairs signing off on the proposed rule in April. It was submitted to the Office of Management and Budget in May of that year for review. Most of the issues raised by OMB were resolved by September, 1992.

The change in administration halted the process until the new Assistant Secretary of Indian Affairs, Ada Deer's appointment in August 1993. After consulting with the ITC, the Assistant Secretary of Indian Affairs resubmitted the proposed rule to OMB on November 15, 1993. The proposed rule was published in the Federal Register on January 27, 1994. The regulation drafting team held five public meetings on the proposed rule during February and March.

In June 1994, a team meeting was held to develop a proposed final rule and a response to comments. The proposed final rule and response to comments were submitted to the Office of Trust Responsibilities, Division of Forestry, for review, in September 1994. It was submitted to the Department's Solicitor's Office in October 1994, for review and in July 1995, the proposed final rule, was submitted to the Office of Regulatory Affairs in the Department.

We are now in the final stages of revising and clarifying the rule in cooperation with the Office of Regulatory Affairs and the Office of the Assistant Secretary. We expect to complete those revisions shortly.

Section 303 of the Act mandates participation of beneficial owners in the management of Indian forests. In developing the proposed final rule, we have worked closely with the Intertribal Timber Council, member tribes, and any interested tribal representative who wished to participate.

This has not been limited solely to regulations, but to the implementation of the Act as well. Any changes in policy or proposed policy are shared with the Indian land owners prior to their implementation. Two of our primary vehicles for accomplishing this are the ITC's annual symposium and the quarterly meetings with the ITC board to exchange program related information.

Section 305 of the law provides for management and protection of Indian forest land with the application of solemn silvicultural



and economic principles. Field inventories collecting key management data have been completed on 98 percent of all major forested reservations. Inventory analysis has been completed on 91 percent, while 70 percent have improved forest plans or are in the process of rewriting expired plans. These activities have, in most instances, been accomplished through Public Law 93-638 contracts. Management plans are prepared in concert with tribal goals established through consultation with tribes.

The Forest Management Deduction process mandated under section 306 has been implemented on forested reservations with the concurrence of each tribe. Current policy for expenditures is as stated in the act. Expenditures are contingent upon an expenditure plan approved by the Secretary and the appropriate Indian tribe.

Section 307 directed us to issue regulations that establish civil penalties for forest trespass. As I related, we are currently working to get those regulations published.

Under section 308, the Secretary is directed to promulgate regulations providing for the payment of receipts from the sale of Indian forest products and upon the request of the tribe, that such payments will go directly to a tribal account. Our proposed regulations provide the tribes with a choice of proceeds being either directly deposited into tribal accounts or processed through the BIA for distribution to the tribe. This has been implemented at several locations.

Section 309 directs us to comply with tribal laws pertaining to Indian forest lands and cooperate with the enforcement of such laws unless prohibited by Federal statute. This has been an ongoing policy in the BIA.

The forest land assistance account authorized under section 310 was established in fiscal year 1993. Language was included in appropriations bills beginning with fiscal year 1994 which allowed Federal forestry funds to be transferred into these accounts. In fiscal year 1994, a total of \$554,000 Bureau-wide was transferred into the forest land assistance accounts for tribes. Training of finance employees, as well as area foresters and agency foresters to facilitate this process has been ongoing. In 1994, the large carryovers at several locations were because of the presence of fires and extreme fire danger which prevented field projects from being accomplished.

Section 311 mandated the BIA to establish a program to provide financial support to forestry programs established by tribes. Again, the formula for determination is included in the regulation package.

In fiscal year 1992, the BIA contracted with the ITC to establish a team of forestry experts to conduct an independent assessment on forest lands, or IFMAT, as Dr. John Gordon reported on earlier.

Section 313 provides for the establishment of a program of technical assistance for Alaska Native villages and regional corporations to promote the stand yield management of their forests. Technical assistance has been provided to the extent that funding allows.

Section 314 provides for the establishment of a forestry education assistance program. In fiscal year 1994, a total of \$230,000 was transferred from central office operations directly to programs for

students. In 1994, we also re-assessed the program and decided we could reach more students if we honored requests for cooperative education program students. This allows us the flexibility to fund tribal requests, which we have done for the last two years. In fiscal year 1995, we have a \$225,000 forestry intern and cooperative education program involving 19 students.

There are other training programs across the country that are not funded by this office. Many of these programs attempt to reach junior and senior high school students to encourage natural resources as a possible career.

This concludes my prepared statement. I would be happy to answer any questions.

[Prepared statement of Mr. Virden appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Virden.

Vice Chairman Senator Inouye cannot be here, and his complete statement will be made part of the record. He regrets not being here. As I'm sure the witnesses understand, we're entering a very busy time in the affairs of the Congress.

[Prepared statement of Senator Inouye appears in appendix.]

The CHAIRMAN. Mr. Pinkham, in your testimony, you believe that the annual status reports submitted by the BIA to the Congress on Indian forest resources are not adequate. In particular, you found the reports don't identify or evaluate compliance with tribal goals and objectives in the forest management plans. The GAO, by the way, has raised the same concern with this committee.

How can we ensure that these annual reports focus on issues of compliance with and monitoring of tribal forest management plans? And Mr. Morishima, if you want to comment on that as well.

Mr. PINKHAM. Chairman McCain, I think one of the things that is most obvious is creating the staffing level that we need to gather that type of information. With such diversity across the United States in timber tribes and their individual goals and objectives, it's quite a challenge to gather that type of information.

On the other hand, we've been working hard in Indian country to increase the sophistication of our staff so that we can gather that kind of data and provide it to the BIA. Many tribes have been working hard and trying to update their forest management plans. In some places, we're still struggling to complete plans.

And as those plans are developed, we'll be able to integrate those tribal goals and objectives. And once that gets caught up, we get that backlog completed, then that kind of information can be reported to the Congress. But it's something that's going to take time and diligent efforts on both the tribal part and the Bureau's part.

Mr. MORISHIMA. Mr. Chairman, if I could add just a couple comments to that. First of all, one of the things that I'm quite concerned about, given the level of funding reductions that we're currently confronting in Indian country is the loss of management planning capabilities. Even now, given the level of funding that we've had in the past 2 years, the percentage of Indian forest lands that have approved forest management plans has decreased from 85 percent down to 70 percent in its most recent report. That problem is going to become more severe as Indian tribes and Indian governments have more difficulty developing their management objectives through coordinated plans.

The CHAIRMAN. For both of you, as you know, in the unfunded mandates legislation, we included Indian tribes in that bill so that you would not be required to have that burden, along with the States, as a result of any laws that are passed here by the Congress. Can you give us some specific examples of the unfunded Federal mandates, particularly that apply to Indian forestry programs? Either one of you.

Mr. MORISHIMA. Actually, the BIA I believe in April of this year issued a report on the unfunded mandates legislation that it was required to implement. And I believe that Terry Virden can provide the committee with a copy of that. But briefly, I believe that there was a shortage of approximately \$46 million or so that was necessary to comply with some of the laws and regulations. NEPA, as a prime example, the Endangered Species Act was another one.

The CHAIRMAN. Mr. Pinkham, could you answer that question and also elaborate on the effect of the Endangered Species Act?

Mr. PINKHAM. Yes; to pull onto Mr. Morishima's comments, when we look at things like ESA, NEPA or the Archeological Protection Act, I hope it's not construed that Indian country is insensitive to those kinds of needs. It's just that we're saddled with the burdens of complying with that.

And many times, I can speak on behalf of the Nez Perce and our experiences, is that when we can get forestry funding, forestry funding must also attempt to cover compliance with wildlife regulations, fisheries regulations, cultural resource type regulations. And so when Dr. Gordon was testifying earlier on the comparison between what the Forest Service gets and what the tribes get per acre to manage their lands, that 35 cents I get per acre must be spread across a multitude of resource issues, not just forestry.

In terms of ESA, it's been very difficult. Tribes have been taking different roles. Perhaps later in the next panel, you'll hear about what one tribe has attempted to do with handling the ESA issue. But it varies across Indian country, as tribes look at ESA differently, looking at how do we protect sovereignty, how can we provide our own expertise.

Issues over that, as we found in the Pacific Northwest, that Indian reservations have become actually havens, islands of opportunity as Federal and private lands have been cut around us, and where do those endangered species look to reside, and the tendency for them to move onto Indian reservations, where now again we're hit with another whammy, so to speak, that now we must provide for correcting the deficiencies that other land managers have had.

So it's had a very significant, not just a sovereignty impact, but an economic impact on the tribes.

The CHAIRMAN. Mr. Pinkham, in your testimony you talk about the Administration seems to be reversing policies under the guise of converting the language into plain English. Do you have some examples of that?

Mr. PINKHAM. Chairman McCain, I haven't had a chance to evaluate the plain English, the changes that have been drafted. To this point, ITC staff has only had a chance to take a cursory look at it. There's a multitude of regulations that we have to cross-reference. And with just the quick overview that staff has made, we've noticed some substantive changes.



I would like to see if Mr. Morishima could add to that.

Mr. MORISHIMA. Mr. Chairman, the draft that I have seen to date represents the addition of a number of definitions, for example, that were not in the original regulations that had been drafted. A number of sections had been relocated and moved around. Some sections appear to be missing entirely. For example, a section on support for tribal programs, tribal forestry programs that had been provided in NIFRMA, the regulations regarding trespass also appear to have suffered substantially in this translation effort.

The CHAIRMAN. Well, I would appreciate it, I know how busy both of you are, if you could send us those examples of the changes. Because we'd like to get them to Mr. Virden and his people. Because clearly, that's not an appropriate, plain English is not an appropriate vehicle for making substantive changes in regulations, especially if it's gone through the 4 or 5 year process that this seems to have gone through.

Mr. Virden, I'd like to give you a chance to respond to that, that there have been substantive changes made in the regulations under the guise of converting language into plain English.

Mr. VIRDEN. Yes; I would concur with that. I agree that there are several important sections, one I can think of, trespass, where the change made substantive changes in the meaning. I think it's typical when you have well-intentioned administrative people trying to change program-specific technical regulations.

The CHAIRMAN. What do we need to do to fix that?

Mr. VIRDEN. I would suggest we keep the regulations as they are and not change them to plain English. We have suggested that.

The CHAIRMAN. I'm all for that, but we've got this mandate to make it in plain English. Is there a way to make it in plain English and preserve the substance of the regulations?

Mr. VIRDEN. I can't answer that. We believe we may have worked out a compromise with the regulatory affairs office, that will allow them to go through with few changes.

The CHAIRMAN. I don't think any of us disagree with the concept of writing regulations so we can read them. That's one of the biggest problems that average citizens face.

But at the same time, to now have it as some vehicle to change the substance of regulations that have taken 4 years, which by the way I appreciate very much your description of the process you went through, it's still not acceptable. I mean, other branches of Government are able to implement regulations that concern law, pertaining to laws that are far more complex than this one in 6, 8, or 9 months.

But right now, we've got an immediate problem, and we've got to work through it, and that is to restore the original intent and substance of the regulations. So maybe I should write a letter to Ada Deer or somebody. But is it driven by OMB? Is that who drives the problem here?

Mr. VIRDEN. It's driven by the Department's Office of Regulatory Affairs, with the administration, under the National Performance Review [NPR] I believe.

The CHAIRMAN. NPR. Well—

Mr. VIRDEN. I will certainly carry your message back to Ms. Deer.

The CHAIRMAN. Thank you. And if Mr. Pinkham and Mr. Morishima would keep us apprised of how this thing comes out. It just seems to me that we are wasting valuable, and as I said, irreplaceable resources while we're going through this drill. And that's not what any of us want, I'm sure.

Mr. Virden, is there support for establishing a central authority for the management of all BIA trust programs relating to natural resources? Is there support for that?

Mr. VIRDEN. I don't believe so.

The CHAIRMAN. You don't believe so. Would you personally support such a thing?

Mr. VIRDEN. Yes; I would.

The CHAIRMAN. Well, maybe that's a subject of another hearing. But I think it makes sense also. Maybe we can call on you at another time.

I think you've made very clear the effects of the draconian cuts in the budget and, as I've said seven or eight thousand times since this all began, I will continue working with Senator Inouye, Senator Domenici, Senator Conrad, Senator Wellstone, and others, in trying to get these resolved.

I'm afraid that what we're going to end up with is about a half-way restoration. And if I were you, I would start planning on that, which is clearly not a significant restoration of funds as I was assured of on the floor of the Senate. But it's hard, I guess it's in the eye of the beholder as to what significant is.

I want to thank all of you for being here. Keep us apprised. We will not leave this issue with this hearing today, and will continue until we have some of the aspects of this very vital natural resources under control. Thanks very much for your testimony here this morning.

Now our third panel is Ronnie Lupe, who's the chairman of the White Mountain Apache Tribe, Whiteriver, AZ; Pliny McCovey, who's a councilman of the Hoopa Valley Indian Reservation; and Lawrence Waukau, who is the president of the Menominee Tribal Enterprises.

Welcome to our witnesses. As I mentioned, your complete testimony will be made part of the record. Please proceed in whatever way you feel is most illuminating for the committee and we'll begin with Ronnie Lupe, in deference to his advanced age. [Laughter.]

Welcome, Ronnie.

#### STATEMENT OF RONNIE LUPE, CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE, ACCOMPANIED BY CHARLES O'HARA, TRIBAL PLANNER

Mr. LUPE. Thank you, Mr. Chairman.

It's good to be here again, good to see you again, Senator.

The CHAIRMAN. Thank you.

Mr. LUPE. I want to mention first that the White Mountain Apache Tribe sends you greetings, Senator, and we appreciate that you have stood your stance with us in reference to some of our sensitive concerns from our reservation involving our resources and people in general. And we appreciate that very much.

The BIA, Fort Apache Agency, through the branch of forestry provides essential trust services to our tribe. These services include



protection and management of our forests from wildlife, insects and disease. In addition, the Bureau manages the forest for multiple uses, such as timber, grazing, wildlife, recreation, water resources and cultural values.

Through strong tribal leadership and management, our forests have provided millions of dollars of income to tribal members and non-members on and around our reservation. Our multiple use forest management practices have allowed my tribe to significantly reduce welfare roles and help our people raise themselves from a dismal economic position. This was not always the case.

For years, the BIA had fallen short of its trust responsibility to our forests, grazing lands and water resources. In years past, our forests have drastically been overcut, not for our benefit, but for the benefit of the non-Indian sawmills which operate on our reservation, for almost 75 years. Under the BIA management, the heart was cut out of our forests.

We have been successful before the U.S. Claims Court in proving that the BIA breached its trust responsibility in its management of our forests and grazing lands. Yet the pennies awarded to us do little to compensate us for upward of \$500 million in damages to our forests, grazing lands and riparian areas.

During the 1960's and 1970's, the Bureau's Forestry Department assured us that we could cut over 100 million board feet per year, and that our forests could sustain such a cut forever. We were forced to expand our sawmill at a cost of \$36 million to accommodate this annual cut under the Bureau's threat that surplus timber that we did not log would be sold to non-Indians outside our reservation.

We determined that the annual cut had to be reduced otherwise to 55 million board feet to ensure sustained yield and to preserve our forests for generations to come. The Bureau's Forestry Department eventually agreed with our figures. These misrepresentations cost us dearly. We eventually learned of the plan passed in 1950 and 1960 to increase water runoff to Phoenix by overcutting our forests.

Eventually, one thing leading to another, the White Mountain Apache Tribe taking the lead in examining our resources from our point of view, in spite of the Bureau insisting that they maintain the management of our resources, we now manage our forests on an ecosystem basis and not on a timber sale by timber sale basis. We have established a statement of relationship with the U.S. Fish and Wildlife Service that recognizes the tribe as the primary manager of our land. This has been one of the most significant steps toward management of our own resources and regarding our timber management of our land.

In that regard, Mr. Chairman, the White Mountain Apache Tribe, the National Indian Forest Service Management Act enacted November 28, 1990, provided us with a hope for a better future. Congress, in wonderful language, declared that our forest lands were among our most valuable resources, that they were a perpetually renewable and manageable resource which provided economic benefits, as well as natural benefits, including ecological, cultural and aesthetic value.

Congress recognized the United States trust responsibility toward our forest land and acknowledged that existing Federal laws did not sufficiently ensure adequate and necessary trust management of those lands. Congress also recognized that Federal investment and management of Indian forest lands are significantly below the level of funding for lands of the National Forest Service, Bureau of Land Management or private forest land.

In one of its most important findings, Congress recognized that the tribal governments can make substantial contributions to the overall management of Indian forest lands. We could not agree more with the findings.

We understand that the purpose of the act is to help and assist the White Mountain Apache Tribe and other tribes across the country. However, unfortunately, despite Congress' intent, the act has not been implemented by the Department of the Interior in a manner which meets the high standards required of a trustee. Specifically, the Secretary was directed in that act to adopt implementing regulations within 18 months of the act's enactment. It's almost 5 years later, and yet we still do not have any published regulations, despite efforts by the tribes, the BIA and the Department of the Interior solicitors who have completed substantial work on those regulations some time ago.

Mr. Chairman, I could go on and on and on in reference to the benefit that the act has for the White Mountain Apache Tribe regarding managing our own resources. The tribal council has already adopted the statement of agreement with the U.S. Fish and Wildlife Service. And our livelihood depends very much on the timber resource stand on our reservation.

And we enjoy very much the continuing relationship with Congress. And we appreciate that the Congress once again recognized the BIA's shortcomings in reference to their trust responsibility and obligations to our reservation, Indian tribes. We have been jubilant in hearing about the cases here in Washington, DC in reference to the cutback.

However, I think Congress has fallen short of the intent to cut back the deficit, the national debt. And also we have been very much aware of the Congress also being disappointed with the BIA. So am I. But when you want the BIA to shoot their own foot, they did not. They aimed for the Indian tribes.

I wish there were more specific language in the cutbacks themselves, so that the money does end up on my reservation, rather than being cut elsewhere, that it really hurts my program on my reservation. Such will be the case with the forest management on my reservation. With the cut already being implemented in 1995, we strive to get back to the level of that funding, which is already very low and inadequate. And yet you will continue to cut again. It will be very tough for me to survive.

Senator you mentioned the self-governance. And I also have mentioned in several cases that the White Mountain Apache Tribe enjoys the relationship and partnership with the BIA in their trust obligation to us. But technically to assist us in every phase of our activity, even the management of our resources, timber, water, clean air, you name it, we have gone forward and directed all agencies on our reservation to be with us on a technical basis.

We have the resources, we have the knowledge, we have the understanding, what's going on today. And we hope that this hearing today will help us program our activity in a much better future for our own people.

Thank you very much.

[Prepared statement of Mr. Lupe appears in appendix.]

The CHAIRMAN. Thank you.

Let me just make a couple of comments before we turn to Mr. McCovey. I appreciate the fact that that environment exists on your reservation, as you describe that the BIA is mainly technical in nature.

But it seems to me that unless you adopt true self-governance, then there will always be this friction between the BIA exercising authority and usurping your decision making process because they have the authority to do so. Unless you formally adopt self-governance, and I want to emphasize, it's a voluntary act, then sometimes the desires of the tribes, the tribal council and elected leaders like yourself is overridden by the BIA.

That's the problem that I have with the present relationship. And those that have consummated self-governance agreements with the Federal Government, there's nothing that the BIA can do except provide technical assistance. Because the money goes directly to the tribe, not through the BIA.

That's why I'm an advocate of the voluntary adoption of self-governance, which has now been adopted by well over 30 tribes. I've forgotten the exact number. But I must hasten to add, no large tribes have adopted self-governance. All have been small tribes that have adopted tribal self-governance. But not a single one of those that's adopted it has anything but the highest praise for it.

I guess my question, a question that came to mind in your written statement where you reviewed the abuses of the 1960's and 1970's, where you were basically forced to timber, even over your objections, how much of that damage has been restored in your estimation, since it was done in the 1960's and 1970, 50 percent, 10 percent? What have you been able to restore of that damage that was inflicted to the forests during those years?

Mr. LUPE. It will be very difficult to assess the restoration. Because the damage has been done. And we're striving now currently with what we have, realizing that there has been tremendous damage to my reservation. And we have now done the assessment on our own, Mr. Chairman, the White Mountain Apache Tribe, and we are using the BIA for their technical advice, technical assistance to our vision. And they have come and accepted our stance.

The CHAIRMAN. I'd be very interested, if there is a survey done of the damage done, how much has been restored and what would be required to make those forests whole again. I'd be very interested, if that information is available, I'd certainly be interested, for my own benefit and the benefit of the committee.

Mr. LUPE. We will make that available to you.

The CHAIRMAN. Thank you very much.

Mr. McCovey, welcome. Councilman McCovey.



# STATEMENT OF PLINY MCCOVEY, COUNCILMAN, HOOPA VALLEY INDIAN RESERVATION

Mr. MCCOVEY. Thank you, Mr. Chairman.

I am Pliny McCovey, I am a Senior, I'm a tribal councilman from the Hoopa Valley Tribe. I would like to thank you for the opportunity to testify here today, to present testimony on the Indian forest management, particularly with the implementation of the National Indian Forest Resource Management Act, Public Law 101-630, and the IFMAT recommendations.

The Hoopa Valley Indian Reservation is located in Northern California with a land base of approximately 89,000 acres, of which 38,000 acres are cut-over. Over 95 percent of the reservation is in tribal trust. Very little is allotted. There are about 550 miles of forest roads. And there also is 1,280 miles of streams.

The reservation once supported an abundant amount of anadromous fish runs. The tribe logs about 500 acres of old growth per year. The annual allowable cut is about 10.5 million board feet of conifers and about 3.2 million board feet of hardwoods.

Hoopa is a self-governance tribe, has been since 1988, and has current assumed most of the BIA forestry program. The only retained BIA functions are the Sacramento Area Office signature authority on timber sale contracts and NEPA FONSI's, and by the Northern California Agency trust fund management of stumpage and IIM accounts.

NIFRMA—has it helped or hindered our forest management? That's a question that we all ask. We believe that NIFRMA has described the tools to implement the state of the art ecosystem management, but the tools themselves are not completely in place. As always, funding remains a substantial issue. The tools may be described, but if there is not funds sufficient to use the tools, then the tribes will continue down a current path of less than a state of the art management.

The following are examples of tools available to tribes from the NIFRMA, but not yet in widespread use. In A, a revision of 25 CFR 163 regulation to reflect NIFRMA. We strongly advocate finalizing the regulations and issuing them as soon as possible.

We understand the current mood of Congress is anti-regulation. However, barring the complete elimination of existing regulations, there is a need to implement most laws by issuing regulations which are more clearly contained in necessary language to implement the Act.

In B, section 307, trespass, the regulations give substantial to designated individuals to cite for trespass sand for arson. However, the authority to cite is lessened in Public Law 280 states where criminal and civil jurisdiction and procedural issues are such that relatively little enforcement actually takes place. In Public Law 280 states, funding for arson investigation is routed from these block grants appropriated by Congress to the State and then to the counties. However, once the funds reach the State, no one at the state or county level seems to be willing to identify the amount that reaches reservations.

And in C, section 308, direct payment of stumpage receipts, to our knowledge, no regulations have been published for section 308 of the NIFRMA which would enable purchasers of tribal timber to

make direct payments for stumpage to tribal accounts. The current process at Hoopa points out both the absurdity of the process yet the apparent necessity of the process in order to ensure trust oversight of stumpage payments. Currently, the BIA has had to retain the function of overseeing stumpage payment collections.

Publication of a revised direct payment regulation would enable the tribal enterprise to make direct payments upon presentation of the bill for collection issued directly from the forest office to the stumpage purchaser.

In D, section 309, secretarial recognition of tribal laws. Section 309 provides for secretarial recognition of tribal laws. The tribe's 150 page Hoopa Forest Management Plan explicitly defines trust management. In that definition, the Forestry Department recommended that the Council adopt most of the existing Federal laws, statutes and regulations relating to NEPA, endangered species, archaeological and cultural protection and Clean Water Act provisions. In doing so, the tribe has balanced the sovereignty with the day to day need to continue to produce timber, employ tribal members and provide jobs in our community.

Hoopa has begrudgingly complied with the ESA, not because it's the law, because it makes good biological sense on the ground. Associated with the managing of the spotted owl, salmon runs, these are instances where the Forestry Department and logging enterprise could benefit from increased flexibility associated with relaxing some of the survey requirements attached to marbled murrelet consultations.

I'd like to briefly talk about the IFMAT implementations. The Hoopa Valley Tribe was one of 35 tribes visited by the IFMAT team. Hoopa has reviewed the IFMAT recommendation and generally supports these recommendations. Here we focus on several recommendations, and what they mean on the ground. In A, make major investments in remedial road work, IFMAT page V-11. The IFMAT report finding and the recommendation with respect to road systems investment of \$200 million is certainly in line with our on the ground experience.

Prior to the tribe taking over management of BIA investment in road reconstruction and maintenance it was approximately \$2 a thousand board feet. This low investment is the reason why the tribe is now paying a higher road cost. The trend of road costs over the past 5 years since the tribe took over the program is dramatic. We agree with the estimates made by IFMAT, investment in infrastructure during the tenure of the Bureau was minimal. The tribe investment has increased over 320 percent compared to the BIA.

In B, make major investments in the activities needed to reduce forest development backlog, IFMAT page V-11. The tribe has made major investments in the future of stand management needs in order to anticipate the impacts of brush competition and the increases of forest health through stocking control of young plantations. The current forest development backlog is mostly but not completely associated with past BIA management before 1980.

At current rates of spending, the forest development backlog will be eliminated in 75 years. The tribe is aggressively avoiding creation of future backlog by taking collections from our current timber sales. The tribe is willing to fund future regeneration so as not



to create a backlog for our children and our grandchildren, but cannot be expected to fund a backlog created by past mismanagement.

And in C, to meet tribal visions for Indian forestry, increase per-acre funding to the national forests incurred before coordinated management, IFMAT V-11. We completely concur with IFMAT that the funding for most tribes, including Hoopa, is very low compared to the U.S. Forest Service, and even lower compared with private industry.

In addition, it is apparent that tribal timber lands generate more revenue commercial acre, 141 percent more, than the U.S. Forest Service, yet has 63 percent of the funding. We suggest a more reasonable and equitable funding solution that would reduce the U.S. Forest Service funding and increase BIA funding for Forest Service management, using the savings of the U.S. Forest Service Funds.

And in D, improve the BIA CFI system, IFMAT recommendation, page V-49. The Hoopa Tribe is one of 35 more tribes that are continuously measuring forest inventory plots. We have approximately 517 plots in Hoopa, and have been measured four times, the last time in 1986. IFMAT recommends inventory support staff at national and area levels should be consolidated, and the number of people on these staffs increased. We strongly support that notion in part because Hoopa is due to measure the CFI next year, and we rely heavily on the support of the Branch of Forest Resources Planning Office to provide technical assistance necessary to measure these plots.

And last, trustee review. The BIA and the tribe jointly conduct an annual trust review. These trust reviews provide a basis to determine whether the BIA and/or the tribe are in a breach of trust management. The tribe strongly believes that the Hoopa definition of trust management documented in 150 pages of our forest management plan and signed by the Secretary provides ample basis to determine whether management is in conformance with the forest management plan definition of trust.

In conclusion, we believe that NIFRMA will provide tools to tribes to streamline their forest management programs, but the tools have not been tested sufficiently to determine if they work. We strongly encourage the Committee to push for getting the regulations published and getting the NIFRMA tested and used.

The IFMAT report highlights what many in Indian country already know: Tribes are underfunded and the assets are being sufficiently degraded. Tribes are doing more with less. Tribal visions will not be realized without sufficient investments in forest resource management. The tribes are increasing their investment in their forests at a time when the Government is downsizing.

Thank you very much, Mr. Chairman.

[Prepared statement of Mr. McCovey appears in appendix.]

The CHAIRMAN. Thank you very much, Councilman McCovey.

President Waukau, welcome. And I noted in your prepared statement that you served our country in Vietnam, and I would like to express my appreciation for that. Please proceed.

**STATEMENT OF LAWRENCE WAUKAU, PRESIDENT, MENOMINEE TRIBAL ENTERPRISES, ACCOMPANIED BY MARSHALL PECORE, CHIEF FORESTER, MENOMINEE TRIBAL ENTERPRISES**

Mr. WAUKAU. Thank you, Senator McCain.

Mr. Chairman and members of the committee, I am Lawrence Waukau, president of Menominee Tribal Enterprises, with Menominee Tribal Enterprises chief forester, Marshall Pecore, who I think many people know from previous testimony.

We are pleased to be here today to in fact support the Indian Forest Resource Management Act.

Mr. Chairman, my life has been shaped by many of the things that have been identified with the Menominee Forest over the years. I'm a tribal member raised on the reservation within the sight of the sawmill. I have in fact, as you noted, served my country with several tours in Vietnam with the 101st and 173d Airborne.

I have in fact taught for the University of Wisconsin for 16 years, where I did my doctoral work. And I have served on the MTE Board of Directors, with the knowledge and background and experience of the Menominee Forest for the last 20 years, and the last several years as President.

So the vast majority of the Federal and State policies that in fact have affected Menominee, both the Termination Act and the Restoration Act, I have played a significant part in, and been a participant in. From this experience, there are some essential truths I think that must become apparent that I wish to share with you today.

To understand the Menominee perspective, it is necessary to review the historical events which shape the Menominee relationship with the Federal Government and develop the tribe's forest land ethic in a process beginning prior to 1927 and ending in 1856. The Menominee Tribe deeded by treaty to the Federal Government over 9 million acres of ancestral land, which Mr. Pecore can demonstrate on the chart here, and layout, retaining approximately 230,000 acres of land today, of which 219,000 acres is forested, and we manage under a sustainable management plan.

While the Menominees have pledged loyalty to the United States and steadfastly pledged its honor, Chief Oshkosh lamented that the only time the Americans shook hands was when they wanted another piece of Menominee land. Well, Mr. Chairman, at the conclusion of this testimony I will give you an opportunity, at least the Congress and the Federal Government, to exchange that promise.

And the Federal Government profited handsomely from the 9 million acres deeded through the treaties. Based upon the Menominee continuous forest inventory, the CFI data, the average per acre value of Menominee timber in 1994 was \$2,457 without land. Assuming that the Menominee ancestral forest land was at least equal to the reservation timber of today, the Menominee tribe ceded over \$22 billion in timber value alone to the Federal Government and eventually to the people of Wisconsin.

In return, the tribe received the promise that they could live on the land with the protection and support of the United States and the security of its reservation with its boundaries as a distinct and

whole people. And this was edified by the Restoration Act, as you know.

Chief Oshkosh, however, understood that the survival of the Menominee people and their culture would be determined by how the tribe utilized its reservation resources. He articulated a concept of sustained yield forestry by advocating cutting trees across the reservation beginning at the east and proceeding to the west. At such a speed and with each generation, the tribe could go back and back again successfully.

This idea became a part of the Menominee land ethic, combining tribal cultural attitudes toward Mother Earth with the market principles of commodity supply and demand. From 1871 to the 1890's, approximately 100 million board feet of timber was harvested on the reservation, leading to the act of June 12, 1890, which established annual allowable cut on Menominee at about 20 million feet per year.

Considering the national forest system wasn't created until 1905, it has remained remarkably unnoticed that the sustained yield forestry mandate in the Nation was in fact advocated by Native Americans, principally the Menominee. On July 16, 1905, a wind-storm of cyclonic proportions blew down about 40 million feet of green timber. In an effort to salvage this volume and waive the 20 million board feet annual cutting limitations, Congress passed the Act of March 28, 1908, authorizing salvage of this volume of blow-down and the construction of the sawmill at Neopit to derive the value of the timber and the benefit of their labor while contributing to the economy of the State.

The additional element of this legislation beyond reaffirming the 20 million feet annual harvest was the requirement to protect and regenerate the forest following harvest. The Menominee became a factor in the State's industrial vigor, successfully operated a sawmill, and a value added manufacturing facility, which by 1954, grew \$10 million in their trust fund account. However, even more remarkable, and equally unchronicled, was the sawmill authorized by the 1908 Act was paid for entirely from by the proceeds of the mill manufacturing, including the mill labor, woods labor managers and foresters necessary to run the operation.

Further, as the Tribe coalesced in communities springing up from the sawmill enterprises, proceeds from the mill, manufactured an interest from the trust fund account paid for the BIA personnel, tribal hospital, general welfare of non-working tribal members.

Up to 1954, the taxpayers of the United States contributed virtually nothing to the support of the Menominee people. This was viewed by Congress as an unqualified success. And on June 17, 1954, the Termination Act was passed. Removal of the Federal recognition of the Menominee Tribe resulted in the liquidation of the \$10 million trust fund, Congressionally mandated per capita payments, and the sale of a portion of the Menominee land.

The tribe was driven from a position of self-sufficiency in 1954 to what was commonly characterized as a pocket of poverty. By the late 1960's, the Menominee verged on bankruptcy and cultural fragmentation. I would only note, Mr. Chairman, that of the \$11 million to approximately \$11 million in the Federal Treasury at



that time, approximately \$6 million of those dollars were charged against the Tribe for the cost of termination, which left about \$5.5.

On December 22, 1973, Congress passed the Restoration Act, partially to correct the moral wrong of termination and partly to relieve the State from the high cost of providing welfare to the reservation. Restoration did not, however, repair the devastation of the Tribe. Instead, it only institutionalized the problems which it created.

The Federal taxpayers now pay to support the programs which had at one time been funded entirely by the Tribe through its own endeavor. Further, the Tribe is still being forced to retire the debt Congress created by the Termination Act, including bond indentures on the tribal sawmill enterprise, and the repurchase of reservation lands sold to program services to the Menominee people.

Presently, Menominee Tribal Enterprises has contributed and anticipates to contribute by the year 2000 approximately \$20 million in asset debt reduction by the year 2000. We have already paid out over \$14 million. And this is money that cannot go back into value-added asset replacement or enhancement of jobs.

The Menominee Restoration Act did not reinstate good forest management practice on our reservation. It only shifted, simply shifted the responsibility of applying sustained yield forest practices from the tribe to the Secretary of the Interior. The Menominee sustained forest yield doctrine is recognized by the Federal Government as a trust protection responsibility solemnly obligated to the Menominee people.

The Secretary of the Interior has pledged protection and support for the Menominee forests through the trust and management agreement and the forest management plan. I believe the Menominee Tribe is one of the first, if not the only, that has a separate and distinct trust and management agreement in the Restoration Act. The Menominee Restoration Act called for a policy of Federal protection without Federal domination, and thereby awakened the Nation to the moral and legal correctness of Indian self-determination.

The Menominee Nation, powered by sovereign status and Federal recognition, has assumed full control of its fundamental program services without diminishing the Federal trust responsibility to tribes or the government-to-government relationship essential to the protection of tribal rights guaranteed by treaty.

The Menominee Restoration Act is the moral and legal equivalent of a treaty and should be recognized and defended with the same intensity as all other Menominee treaties. Federal trust protection of the essential responsibility retained by the Government under the Restoration Act was promised to the Tribe as a safeguard against ever again having to liquidate Menominee lands or resources in exchange for its cultural existence.

If the Congress does not continue to require the Secretary of the Interior to faithfully execute his trust protection duties as prescribed in the Restoration Act, it will mark the beginning of some new but equally destructive Federal termination policy.

Consistent with the Secretary's trust protection role, the BIA developed the forest program funding and position analysis to determine the budget needed to manage and protect Indian forest re-

sources across the Nation. Essentially, the BIA developed a formula which considered all forest trust functions which should be provided by the Secretary on forest trust lands. According to this formula, the Menominee forest program needs an additional \$1.2 million above its fiscal year 1993 funding level.

This current funding level shortfall denies protection promised to the Menominee people in exchange for lands ceded in the early 1800's, land which could today provide a source of jobs and economic development to the membership had they not been deeded to the Federal Government. Therefore, the forestry functions is not funded and hence the services not provided prevent the Menominee Tribe from fully receiving all the benefits which could be derived from a diminished land base.

The Menominee Tribe can provide some forestry benefits to its members only by increasing the level of management on limited forest acreage or by increasing the land base and continuing its practice of traditional sustained yield management philosophy on more land. If Congress cannot find funds which would increase the intensity of management on the Menominee Forest, it should then consider returning part of the Menominee's ancestral homeland, the Nicolet National Forest, to help achieve tribal self-sufficiency.

Unlike many non-Indian concepts of man and nature, the Menominee people do not view themselves as separate from the forest or from the forest and its creatures independent from them. The Menominee culture exists in harmony with Mother Earth, understanding the circle of life. The forest, properly treated, will sustain the tribe with economic, cultural and spiritual values today and generations into the future. This has been taught and practiced on Menominee lands for over 5,000 years, and accounts for the quality of the forest on the reservation today.

The Menominee land ethic explains how the Tribe has successfully operated a sawmill for over 100 years without depleting the forest of high quality timber. In fact, the forest today is worth over \$500 million in timber value alone. This value, however, could be its ultimate demise and lead to wholesale forest liquidation if the tribe is unprepared to meet the realities of a global economy or if Federal protection weakens. The simplistic beauty of the Menominee sustained yield philosophy has been to cut the forest at such a speed and intensity that the remaining trees will grow and replace those harvested, thereby assuring a perpetual supply of timber for all tribal generations.

Another way of looking at this concept is that the sawmill is subordinate to the forest; the productive capability of the forest establishes the level of cutting. If the sawmill determines the volume of trees which needs to be removed to achieve profit and community income, then the forest will be overcut or mined, and systematically degraded.

This is common in forest communities outside Menominee dependent on income derived from primary manufacturing alone. The alternative to this approach is secondary manufacturing or value added manufacturing. If the tribe is to stay on the path of sustained yield management and continues to support tribal communities through their labors in the forest and sawmill, it must eventually support every effort to identify and achieve value added



manufacturing. This approach will shift pressure away from the forest to produce the income beyond its capability and require Menominee Tribal Enterprises to derive jobs and income from product manufacturing.

The Menominee Nation is successfully balancing the two worlds, the traditional world representing the core of Menominee beliefs and the contemporary world of politically driven global economies. While these forces may seem distinctly separate, opposing and even threatening to many tribal leaders, since contact with the first Europeans, have demonstrated a sophistication in meshing market principles with cultural values.

The National Indian Forest Resources Management Act is an important piece of Federal legislation to Indian country, Menominees included. However, since it contains very little that is not already being done on the Menominee Forest, its greatest value to the Menominee people would seem to be the strengthened commitment by the Federal Government to its trust protection obligations, both legal and moral. It would suggest that the Congress understands Indian people can, through their wisdom, compassion and hard labor, move toward long-term economic self-sufficiency without destroying the resources based on which Indian survival is predicated.

Unfortunately, it appears that the Congress if this Nation has failed to comprehend the most essential aspects of this relationship with the Indian people and trust protection flowing from its solemn treaty obligations. The National Indian Forest Resources Management Act will neither improve the conditions on Indian forest lands nor reduce tribal dependency on the Federal Government if the Federal Government trust responsibility to Indian people is diminished or abrogated.

The Menominee Tribe has demonstrated that strong Federal protection and involvement has increased tribal self-sufficiency and reduced the need for Federal largess. Conversely, the greatest cost to both the tribe and the Nation has been when the Federal Government abandoned its treaty obligations and predatory interest from outside the reservation were allowed to feed against tribal wishes.

Circumstances which would have crushed many communities failed to extinguish the Menominee Tribe. If the Indian spirit is capable of surviving the most nefarious Federal policies directed against it, shouldn't it be possible that this same spirit can reach the loftiest goals espoused by this committee through a government-to-government relationship?

Thank you, Mr. Chairman.

[Prepared statement of Mr. Waukau appears in appendix.]

THE CHAIRMAN. Thank you very much, Mr. Waukau.

Chairman Lupe, you described a court case in which the White Mountain Apache Tribe allege the BIA mismanaged the forest resources, thereby breaching the Federal Government's trust obligation to tribes. Can you tell us the results of that case?

MR. LUPE. What was that, Mr. Chairman?

THE CHAIRMAN. The case where the White Mountain Apache Tribe sued the Federal Government for breaching the Federal Government's trust obligations to the tribe as far as mismanagement of the forest resources are concerned.

Mr. LUPE. We were compensated, but the amount was, I believe, somewhere close to maybe about 20 cents an acre, or something like that, at the outset, nowhere near meeting the loss that we had incurred in the number of years under the Bureau of Land Management administration and forest activity on our reservation. Not nearly enough. We would require a lot more, a lot more funding, to really restore what we have lost.

The CHAIRMAN. Could I ask, beginning with you, all three witnesses, what steps your tribe has taken to protect the forest and woodlands from illegal trespass, and what assistance you need from Congress in order to better be able to protect the forest and woodlands from illegal trespass.

Mr. LUPE. I think the White Mountain Apache Tribe has long been noted for protection of our land border, the border lines. It's at a tremendous cost to ourselves. The BIA, I believe, should take up a lot of slack in the cost of protection of encroachment on our land. Not only for the resource protection, but for other reasons.

And our money that we derive from the timber operation is not nearly enough. We can run the program with what we have at the present time. But to further enhance protection of our land, we just do not have enough money to do that with.

So we would ask Congress to step forward and give us some more money in protection of our woodland and resource management. To the tune of how much money? We can examine statistics when we get back, and then we will measure those statistics and figures.

The CHAIRMAN. Thank you.

Councilman McCovey.

Mr. MCCOVEY. Yes, Mr. Chairman; thank you. On the Hoopa Reservation, we lose approximately \$1 million a year to timber theft. We have a large amount of arson on our reservation. We have had approximately 200 and some fires this year that have already taken place.

The CHAIRMAN. Is that because of the dry weather, also?

Mr. MCCOVEY. The dry weather and an arson problem. We have brought in arson investigators. We have a conservation officer that's in the woods. I think we've tried to control the wood cutting that is going on through—

The CHAIRMAN. Give me an example. Somebody just drives in, in a pickup truck, or a rig, and just starts cutting?

Mr. MCCOVEY. Yes; a lot of times that is the case. And a lot of times tribal members even do the cutting.

But what we're trying to do is basically give them wood on other than timber sales and things like that, where they won't be coming in and cutting green wood. But I think that the funding for the arson investigation and tribal law enforcement has always been a problem in California, the funding problems that we've had there, because we are a Public Law 280 State. The State has criminal jurisdiction there.

The CHAIRMAN. That was my question. If you catch somebody who is cutting trees on your reservation, what's the procedure then?

Mr. MCCOVEY. Through our conservation officer, they are cited and they are brought into tribal court and the laws are applied to the person whether or not they are an Indian tribal member.

The CHAIRMAN. What's the penalty?

Mr. MCCOVEY. It's pretty much how much the timber is worth at the time. It's worth quite a bit right now, so the penalties are pretty stiff.

The CHAIRMAN. Can you put them in jail?

Mr. MCCOVEY. No; we don't have criminal jurisdiction.

The CHAIRMAN. Can the State put them in jail?

Mr. MCCOVEY. Yes; the State can.

The CHAIRMAN. If there's a very egregious situation, you could refer that case to the State for prosecution?

Mr. MCCOVEY. Yes.

The CHAIRMAN. When you do that, do you get cooperation from the State?

Mr. MCCOVEY. Not at all times. I think that the State most of the time has taken a back seat to, or our cases take a back seat to what their goals are, and their priorities.

The CHAIRMAN. Do me a favor. Will you have your staff send us some examples of where they have acted and where they have not acted in assisting you in prosecution of these criminal acts, and what the general assessment is of that situation?

Mr. MCCOVEY. We certainly will.

The CHAIRMAN. Thank you.

Mr. WAUKAU.

Mr. WAUKAU. Our cases, again, is similar. We have problems with trespass, hunting, fishing and timber thefts. We have recently prosecuted individuals, non-tribal members and tribal members, for theft of logs from the reservation at night. But because we punished them in tribal court, but we were not able to get into a Federal court because the docket was overloaded, and they would not handle it.

The CHAIRMAN. Councilman McCovey mentioned \$1 million last year. Have you got an estimate of how much damage has been done on your reservation?

Mr. WAUKAU. No; we don't have an estimate. The only case that we were able to prosecute, the estimated value was in excess of \$10,000.

The CHAIRMAN. Is it getting worse or better?

Mr. WAUKAU. It's getting worse.

The CHAIRMAN. I note the presence of Senator Gorton. Would you care to say anything, Senator Gorton?

Senator GORTON. No; thank you, I just have a message for you, Senator. Go right ahead.

The CHAIRMAN. I'm worried. [Laughter.]

Mr. WAUKAU. Mr. Chairman, on that question, Mr. Pecore can show you a photo of what the Menominee Reservation looks like from 100 miles up, in this satellite photo. And you can understand why our reservation, surrounded by woodlots and farmlots, is difficult to protect, both waterways and fisheries. And the riparian rights that are there, with respect to the Exxon mine, the proposed Exxon mine in Northern Wisconsin, and the danger of what we

may be proposing with the diminishment of the water quality and the environment. We're very conscious of that.

When we're talking about, I believe, the Menominee Tribe probably stands at the forefront with respect to the Endangered Species Act. We have eagles living on our mill pond, and cormorants and other animals, the loon, right on our mill pond. And we're very cognizant of that. We have always in our philosophy incorporated those species, mixtures, living things out there in our philosophy of forest management. It's just been there. And I think that's one of the reasons we are successful in having a good forest, a quality forest.

The CHAIRMAN. Well, I hope that I have the opportunity of visiting your reservation and also the Hoopa Reservation. I also would recommend to you sometime to come down and visit the White Mountain Apache Reservation. I'm sure that Chairman Lupe would allow you to kill an elk if you'd like.

Mr. WAUKAU. I think that's for a price. [Laughter.]

The CHAIRMAN. It's truly one of the most magnificent parts of America, as I'm sure yours are. I just haven't had the opportunity of visiting and camping on your reservation as I have had the opportunity at the White Mountain Apache Reservation.

Perhaps, Chairman Lupe, we should have those regulations issued in plain Apache, and maybe they would be more understandable than it is today. [Laughter.]

All three of you came from a long distance. I appreciate your involvement. And if you don't mind, we do have some additional questions we'd like to submit in writing to you. And we'd appreciate responses.

Again, thank you for being here this morning. I want to assure you, we are not going to quit on this issue. We will evaluate the regulations when they come out. We will be receiving your input and advice and counsel. And I believe that I have some partial appreciation of the attachment that you have for what little lands are left to you and we'll do everything we can to help you preserve those precious natural resources.

Thank you very much. This hearing is adjourned.

[Whereupon, at 11:36 a.m., the Committee was adjourned, to reconvene at the call of the Chair.]





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## APPENDIX

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### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII,  
VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Good morning and welcome to this hearing of the Committee on Indian Affairs. First of all, I want to commend the chairman of the this committee, Senator McCain, the primary sponsor of this legislation, for his continuing efforts to improve the Management and Development of Forest and Woodland Resources on Indian Lands.

As many of you who are gathered here today are aware, what we hoped to achieve with the passage of this legislation was to reform the Federal law governing one of the most valuable and important Indian trust assets.

The legislation was intended to provide a statutory basis to begin to protect and manage the Indian forest resources, and to ensure that Indian forests and woodlands are managed in perpetuity on a sustained yield basis.

So it is crucial that we understand how the witnesses who are here today view the implementation of the National Indian Forest Resources Management Act, since its passage in November 1990.

Based upon the many expressions of concern communicated to this committee from Indian country, we have convened this hearing today so that we might all have a better understanding of the efforts that have been undertaken to implement the act and any obstacles that may exist to the full implementation of the act.

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PREPARED STATEMENT OF TERRY VIRDEN, ACTING DIRECTOR, OFFICE OF TRUST  
RESPONSIBILITIES, BIA, DEPARTMENT OF THE INTERIOR

Good Morning Mr. Chairman and members of the committee. I am Terry Virden, acting director, Office of Trust Responsibilities and chief forester for the Bureau of Indian Affairs [BIA]. It is my pleasure to come before you today to report on the progress we have made in the implementation of Title III of Public Law 101-630, the National Indian Forest Resources Management Act.

Although much progress has been made in implementing this title, I am concerned that just as it is about to produce tangible benefits to Indian tribes, the Senate's proposed cuts for BIA programs will effectively kill the entire Indian forestry management program. We expect many of the program components, such as the forestry education assistance program, will have to be discontinued or reduced significantly. The resulting loss of personnel, both in the central office and at lower levels, will further hamper our ability within the BIA and at the tribal level to carry out our current functions. In the field, cuts to the Tribal Priority Allocation program will result in fewer timber sales and fewer forest development projects, which means less revenue on and near the reservations. Reservation timber sales represent income for both the Indian and non-Indian community. With the projected cuts, we expect our forestry staff to be severely reduced. Also, we would be unable to support the annual Intertribal Timber Council [ITC] symposium. This could result in our

taking a step backward by making it much more difficult for tribes to participate and have meaningful input in policy and in the future direction of the program.

I will briefly discuss our regulation writing process. In January 1991 a regulation drafting team comprised of tribal and BIA members was formed. Four regional scoping meetings were held that winter and spring with our draft of the proposed rule ready for BIA and Department review by December 1991. The review process continued from January through April with the Assistant Secretary—Indian Affairs signing off on the proposed rule in April. It was submitted to the Office of Management and Budget [OMB] in May of that year for review. Most of the issues raised by OMB were resolved by September 1992. The change in Administration halted the process until the new Assistant Secretary—Indian Affairs, Ada Deer's appointment in August 1993. After consulting with the ITC, the Assistant Secretary—Indian Affairs resubmitted the proposed rule to OMB on November 15, 1993, and the proposed rule was published in the Federal Register on January 27, 1994. The regulation drafting team held five public meetings on the proposed rule during February and March. In June 1994 a team meeting was held to develop a proposed final rule and a response to comments. The proposed final rule and response to comments were submitted to the Office of Trust Responsibilities, Division of Forestry for review in September 1994. It was submitted to the Department's Solicitor's office in October 1994 for review and in July 1995, the proposed final rule was submitted to the Office of Regulatory Affairs in the Department. We are now in the final stages of revising and clarifying the rule in cooperation with the Office of Regulatory Affairs and the Office of the Assistant Secretary. We expect to complete this revision shortly.

Section 303 of the act mandates participation of beneficial owners in the management of Indian forests. In developing the proposed final rule, we have worked closely with the ITC, member tribes, and any interested tribal representative who wished to participate. This has not been limited solely to regulations but to the implementation of the act as well. Any changes in policy or proposed policy are shared with the Indian land owners prior to their implementation. Two of our primary vehicles for accomplishing this are the ITC's annual symposium and the quarterly meetings with the ITC board to exchange program related information.

Section 305 of the law provides for management of Indian Forest Land. Field inventories collecting key management data have been completed on 98 percent of all major forested reservations. Inventory analysis has been completed on 91 percent, while 70 percent have approved forest plans or are in the process of rewriting expired plans. These activities have, in most instances, been accomplished through Public Law 93-638 contracts. Management plans are prepared in concert with tribal goals established through consultation with tribes.

The Forest Management Deduction process mandated under section 306 of Public Law 101-630 has been implemented on forested reservations with the concurrence of each tribe. Current policy for expenditures is as stated in the act. Expenditures are contingent upon an expenditure plan approved by the Secretary and the appropriate Indian tribe.

Under section 308, the Secretary is directed to promulgate regulations providing for the payment of receipts from the sale of Indian forest products and, upon the request of a tribe, that such payments will go directly to a tribal account. Our proposed regulations provide the tribes with a choice of proceeds being either directly deposited into a tribal account or processed through the BIA before distribution to the tribe.

Section 309 directs the Secretary to comply with tribal laws pertaining to Indian forest lands and cooperate with the enforcement of such laws unless prohibited by Federal statute. This has been an ongoing policy in the BIA.

The forest land assistance account authorized under section 310 was established in fiscal year 1993; Language was included in appropriations bills beginning with fiscal year 1994, which allowed Federal forestry funds to be transferred into these accounts. In fiscal year 1994 a total of \$486,000 Bureauwide was transferred into the forest land assistance accounts. Training of finance employees, as well as area foresters and agency foresters, to facilitate this process has been ongoing. In 1994, due to the severe fire season, there were large carryovers at several locations because projects could not be accomplished due to the presence of fires and extreme fire danger.

In fiscal year 1992, the BIA contracted with the ITC to establish a team of forestry experts to conduct an independent assessment of Indian forest lands and Indian forest land management practices. This was completed in November 1993. In fiscal year 1994, the report was presented to the Congress. All members of this committee have been provided with an executive summary of the report developed by the Indian Forest Management Assessment Team.

Section 313 provides for the establishment of a program of technical assistance for Alaska Native villages and regional corporations to promote the sustained yield management of their forest resources. Technical assistance has been provided to the extent that existing funds allow.

Section 314 provides for the establishment of a forestry education assistance program. In fiscal year 1994, a total of \$230,000 was transferred from central office operations to this program. In 1994 we also reassessed the program and decided we could reach more students if we honored requests for the cooperative education program students. This allows us the flexibility to fund tribal requests which we have done the last 2 years. In fiscal year 1995, we have a \$225,000 forester intern and cooperative education program involving 19 students. There are other training programs across the country that are not funded by this office. Many of these programs attempt to reach junior and high school students to encourage natural resources as a possible career.

This concludes my prepared statement. I would be happy to answer any questions you may have.

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#### PREPARED STATEMENT OF LAWRENCE WAUKAU, PRESIDENT, MENOMINEE TRIBAL ENTERPRISES

Mr. Chairman, members of the committee, I am Lawrence Waukau, president of Menominee Tribal Enterprises, business arm of the Menominee Indian Tribe of Wisconsin. I am very pleased to present to the committee the Menominee Tribe's perspective of the National Indian Forest Resources Management Act.

My life has been shaped and identified by the Menominee Forest. I am a tribal member raised on the reservation in sight of the tribal sawmill. I served my country in Viet Nam, the people of Wisconsin as a university educator and my tribe as an elected member of the MTE Board of Directors and as president of the company. I have lived most of my life subject to the various Federal and State policies mandated upon the tribe by the Menominee Termination Act and later the Menominee Restoration Act. From this experience, some essential truths have become apparent, and I wish to share these with you today.

To understand the Menominee perspective, it is necessary to review the historical events which shaped the Menominee relationship with the Federal Government and developed the tribe's forest land ethic. In a process beginning prior to 1827 and ending in 1856, the Menominee Tribe deeded by treaty to the Federal Government over 9 million acres of ancestral land, retaining approximately 230,000 acres of land as their reserve. While the Menominees pledged loyalty to the United States and steadfastly honored this pledge, Chief Oshkosh lamented that "the only time Americans shook hands was when they wanted another piece of Menominee land".

And, the Federal Government profited handsomely from the 9 million acres deeded to them through the treaties. Based upon Menominee Continuous Forest Inventory [CFI] data, the average per acre value of Menominee timber in 1994 was \$2,457 [without land]. Assuming that the Menominee ancestral forest land was at least equal to the reservation timber of today, the Menominee Tribe ceded over \$22 billion in timber value alone to the Federal Government and eventually to the people of Wisconsin. In return, the tribe received a promise that they could live, with the protection and support of the United States, in the security of their reservation boundaries as a distinct and whole people.

Chief Oshkosh, however, understood that the survival of the Menominee people and culture would be determined by how the Tribe utilized its reservation resources. He articulated a concept of sustained yield forestry by advocating cutting trees across the reservation, beginning at the east and proceeding to the west, at such a speed that each generation of the tribe could go back and begin again. This idea became part of the Menominee land ethic, combining tribal culture and attitude toward Mother Earth with the market principles of commodity supply and demand. From 1871 to 1890, approximately 100 million board feet of timber was harvested on the reservation, leading to the act of June 12, 1890 which established the annual allowable cut on Menominee at 20 million board feet per year. Considering that the National Forest System wasn't created until 1905, it has remained remarkably unnoticed that the first sustained yield forestry mandate in the Nation was advocated by Indians.

On July 16, 1905 a windstorm of cyclonic proportions blew down over 40 million board feet of green timber. In an effort to salvage this volume and waive the 20 million board feet annual cutting limitation, Congress passed the act of March 28, 1908, authorizing the salvage of this volume of blowdown and the construction of a sawmill at Neopit to derive the value of the timber and the benefit of their labor



while contributing to the economy of the State. The additional element of this legislation beyond reaffirming the 20 million board feet annual harvest was the requirement to protect and regenerate the forest following harvest. This legislation, also known as the La Follette Act, was based on the efforts of Senator Robert La Follette as principle advocate for the Menominee. Based on the Senator's understanding of the Menominee people and Forest, he successfully argued for a commercial sawmill enterprise on the reservation with:

... the harvest of the crop of forest products should be made in such a way that the forest will perpetuate itself; that it shall remain as a rich heritage to these people from which, through their own labor, they may derive their own support, and that, too, without ruthless destruction. Under the bill as proposed. . . these Indians shall be made a factor in our industrial life.

And history reveals the Menominees did become a factor in the States industrial vigor, successfully operating a sawmill and value added manufacturing facility which, by 1954, accrued over \$10 million in their trust fund account. However, even more remarkable, and equally unchronicled, was that the sawmill authorized by 1908 Act was paid for entirely from the proceeds of mill manufacturing, including the mill labor, woods labor, managers and foresters necessary to run the operation. Further, as the tribe coalesced into communities springing from the sawmill enterprise, proceeds from mill manufacturing and interest from the trust fund account paid for the BIA agency personnel, tribal hospital and general welfare of nonworking tribal members. Up to 1954, the taxpayers of the United States contributed virtually nothing to the support of the Menominee people.

This was viewed by Congress as an unqualified success, and on June 17, 1954, the Menominee Termination Act was passed. Removal of Federal recognition of the Menominee Tribe resulted in the liquidation of the \$10 million trust fund [Congressionally mandated per capita payments] and the sale of a portion of Menominee land. The tribe was driven from a position of self-sufficiency in 1954 to what was commonly characterized as a "pocket of poverty". By the late 1960's, the Menominee people verged on bankruptcy and cultural fragmentation.

On December 22, 1973, Congress passed the Menominee Restoration Act, partly to correct the moral wrong of termination and partly to relieve the State from the high cost of providing welfare to the reservation. Restoration did not, however, repair the devastation to the tribe. Instead, it only institutionalized the problems which it created. The Federal taxpayers now pay to support the programs which had at one time been funded entirely by the tribe through their own endeavor. Further, the tribe is still being forced to retire debt the Congress created by the Termination Act, including a bond indenture on the tribal sawmill enterprise and the repurchase of reservation lands sold to finance program services to the Menominee people.

The Menominee Restoration Act did not reinstate good forest management practices on the reservation, it simply shifted the responsibility of applying sustained yield forestry practices from the tribe to the Secretary of the Interior. The management objective of the Menominee Tribe, prior to and after termination, was to maximize the "quantity and quality" of sawtimber grown under sustained yield management principles while maintaining the diversity of native species. This philosophy has been the tradition of the Menominee's for generations and is the backbone of all forest management decisions on the reservation.

The Menominee sustained yield forestry doctrine is recognized by the Federal Government as a trust protection responsibility solemnly obligated to the Menominee people. The Secretary of the Interior has pledged protection and support for the Menominee Forest through the Trust and Management Agreement and the Forest Management Plan. These documents explicitly state the responsibilities, policies and procedures both the Menominee Tribe and the Federal Government will follow to continue meeting our obligations to the next seven generations.

The Menominee Restoration Act called for a policy of "Federal protection without Federal domination", and thereby awakened the Nation to the moral and legal correctness of Indian Self-Determination. The Menominee Nation, empowered by sovereign status and Federal recognition, assumed full control over it's fundamental program services without diminishing the Federal trust responsibility to the tribe or the government to government relationship essential to the protection of tribal rights guaranteed by treaty.

The Menominee Forestry Program represents the successful identification and discharge of the appropriate duties and responsibilities of both the tribe and the BIA in meeting our forest management obligations to the Menominee people. However, this success is based upon events and actions of the past. The future may be far



less certain or predictable, particularly if the Federal Government pursues a policy which diminishes direct Secretarial involvement in Indian country.

The Menominee Restoration Act documents, particularly the Restoration Plan and the Trust and Management Agreement, describe the trust protection role of the Secretary of the Interior. These documents put forth a concept of Menominee Indian self-determination which placed day to day programmatic responsibility with the tribe while establishing narrow but critical trust protection duties and oversight responsibilities for the Secretary. The Menominee Tribe and the BIA have, since 1974, developed and refined the trust protection relationship contemplated at restoration. However, the BIA has tended to view the Restoration Act simply as an appropriation bill rather than as landmark self-determination legislation empowering Menominee Tribal Government, including Menominee Tribal Enterprises, the business arm of the tribe.

The Menominee Restoration Act is the moral and legal equivalent of a treaty, and should be recognized and defended with the same intensity as all other Menominee treaties. Federal trust protection, the essential responsibility retained by the Federal Government under the Restoration Act, was promised to the tribe as a safeguard against ever again having to liquidate Menominee lands or resources in exchange for its cultural existence. If the Congress does not continue to require the Secretary of the Interior to faithfully execute his trust protection duties as prescribed in the Restoration Act, it will mark the beginning of some new but equally destructive Federal termination policy.

Consistent with the Secretary of the Interior's trust protection role, the BIA developed the Forestry Program Funding and Position Analysis to determine the budget needed to manage and protect Indian forest resources across the nation. Essentially, the BIA developed a formula which considered all the forest management trust functions which should be provided by the Secretary on forested trust lands. According to this formula, the Menominee Forestry Program needs an additional \$1.2 million above its fiscal year 1993 funding level.

This funding shortfall is significant not as a measure of the quality of services currently being provided [with limited funds], but rather as a measure of those services which are not being provided to the tribe by the Secretary as fiduciary, that is, forestry services which are reasonable and necessary by the same standard used on all federally managed forest lands. In other words, the quality of the forest management services provided to the membership within the funding and staffing currently available is among the very best in the forestry profession. However, these services are still below the level which the Federal Government recognizes as minimally acceptable on lands under its direct control.

This current funding shortfall denies the protection promised to the Menominee people in exchange for lands ceded in the early 1800's land which could today provide a source of jobs and economic development to the membership had they not been deeded to the Federal Government. Therefore, the forestry functions not funded [and hence the services not provided] prevent the Menominee Tribe from fully receiving all the benefits which could be derived from a diminished land base. The Menominee Tribe can provide more forestry benefits to its members only by increasing the level of management on limited forest acreage or by increasing the land base and continue practicing its traditional sustained yield management philosophy on more land. If Congress cannot find the funds which would increase the intensity of management on the Menominee Forest, it should then consider returning part of Menominee's ancestral homeland, the Nicolet National Forest, to help achieve tribal self-sufficiency.

Unlike many non-Indian concepts of man and nature, the Menominee people do not view themselves as separate from the forest or the forest and its creatures independent from them. The Menominee culture exists in harmony with Mother Earth, understanding the circle of life. The forest, properly treated, will sustain the tribe with economic, cultural and spiritual values today and generations into the future. This has been taught and practiced on Menominee lands for over 5,000 years, and accounts for the quality of the forest on the reservation today.

The Menominee land ethic explains how the tribe has successfully operated a sawmill for over 100 years without depleting the forest of high quality timber. In fact, the Menominee forest today is worth over \$500 million in timber value alone. This value, however, could be its ultimate demise and lead to wholesale forest liquidation if the tribe is unprepared to meet the realities of a global economy or if Federal protection weakens.

The tribe has demonstrated that it can manage its forest under sustained yield principles, including supporting tribal communities through logging and lumber manufacturing. While the Menominee have become very sophisticated in lumber manufacturing and marketing techniques, sawmill costs and profit margins have

been changing. It has become increasingly difficult to survive on primary lumber manufacturing due to increased machinery costs, new technologies and smaller profits. Herein lies the threat; as profit levels shrink, the Tribe can generate additional dollars only by increasing the volume of timber cut. If the Menominee Tribe were forced to support Tribal communities as a result of Federal [or even State] governmental actions such as funding cuts or increased taxation, the pressure to make money for the short term needs would be intense.

The simplistic beauty of the Menominee sustained yield philosophy has been to cut the Forest at such a speed and intensity that the remaining trees would grow and replace those harvested, thereby ensuring a perpetual supply of timber to the tribe for all generations. Another way of looking at this concept is that the sawmill is subordinate to the forest; the productive capability of the forest establishes the levels of cutting. If the sawmill determines the volume of trees which must be removed to achieve profit and community income, then the forest will be overcut, or mined, and systematically degraded.

This is common in forest communities outside Menominee dependent on income derived from primary manufacturing alone. The alternative to this approach is secondary manufacturing or value added manufacturing. Value added manufacturing takes green lumber and further processes this material into other products, passing these costs along to the market place. Value added manufacturing depends upon identifying markets for specific wood products [paneling, furniture, flooring, et cetera] and transforming lumber into wood products. The volume of wood removed from the Menominee Forest, under value added, becomes secondary to the manufacture and marketing of lumber into wood products commanding much higher prices. Tribal income under the value added approach increases with the same level of harvest as primary manufacturing without the danger of overcutting the Forest.

If the tribe is to stay on the path of sustained yield management and continue to support tribal communities through their labors in the Forest and sawmill, it must support every effort to identify and achieve value added manufacturing. This approach will shift pressure away from the forest to produce income beyond its capability and require Menominee Tribal Enterprises to derive jobs and income from product manufacturing. Value added decisionmaking will be more demanding upon the Enterprise managers, however, this effort will reduce the tribe's need to "squeeze" every dime from its standing timber during times of economic hardship. The MTE Mill Revitalization Plan is the best long term solution to a healthy forest and a stable community economy.

The Menominee Nation is successfully balancing between two worlds; the traditional world representing the core of Menominee beliefs and the contemporary world of politically driven global economies. While these forces may seem distinctly separate, opposing and even threatening to many, tribal leaders, since contact with the first Europeans, have demonstrated a sophistication in meshing market principles with cultural values. The tribe's ability to harvest and manufacture sawtimber for over 135 years, while actually increasing the standing tree volume on the Forest, has earned international attention and respect.

The Menominee leaders, while remaining vigilant to the concerns listed in the sections above, must continue to follow the sustained yield principles of their forefathers to service the debt of responsibility to future generations. Preservation of the land, protection of the resources and application of exacting forest management practices will meet the obligations of the next 135 years, consistent with the Tribes cultural and land management ethics.

The National Indian Forest Resources Management Act is an important piece of Federal legislation to Indian country, Menominee included. However, since it contains very little that is not already being done on the Menominee Forest, its greatest value to the Menominee people would seem to be a strengthened commitment by the Federal Government to its trust protection obligations, both legal and moral. It would suggest that the Congress understands that Indian people can, through their wisdom, compassion and hard labor, move toward long term economic self-sufficiency without destroying the resource base upon which Indian survival is predicated.

Unfortunately, it appears the Congress of this nation has failed to comprehend the most essential aspect of its relationship with the Indian people—trust protection flowing from its solemn treaty obligations. The National Indian Forest Resources Management Act will neither improve the condition of Indian forest land nor reduce tribal dependency upon the Federal Government if the Federal Governments trust responsibility to Indian people is diminished or abrogated. The Menominee Tribe has demonstrated that strong Federal protection and involvement has increased tribal self-sufficiency and reduced the need for Federal largesse. Conversely, the greatest cost to both the tribe and the Nation has been when the Federal Government abandoned its treaty obligations and predatory interests from outside the reservation were allowed to feed against tribal wishes. Circumstances which would have crushed many communities failed to extinguish the Menominee Tribe. If the Indian spirit is capable of surviving the most nefarious Federal policies directed against it, shouldn't it be possible that this same spirit can reach the loftiest goals espoused by this committee through a government to government partnership?

# **An Assessment of Indian Forests and Forest Management in the United States**

November 1993

## **Executive Summary**

By the Indian Forest Management Assessment Team  
For the Intertribal Timber Council



## AUTHORS

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Photo by Michael Murrell

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Photo by Mary Rauden

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## THE RESOURCE TEAM

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The following individuals provided support and expertise to IFMAT, visited many reservations, and contributed valuable insights in IFMAT meetings and in preparation of this report



Joyce Berry, Assistant Professor, Colorado State University, Fort Collins, CO. Expertise includes natural resource policy, human dimensions, social survey research.



Karen Gabriel, consulting biologist, Corvallis, OR. Expertise includes stream ecology, fisheries.



Debbie Cummings, forester, Oregon State University, Corvallis, OR. Expertise includes timber inventory, growth and yield, report preparation.



Cal Mukumoto, Senior member of Mukumoto Associates, Bend, OR. Expertise includes marketing, Indian forestry. Served as overall fiscal operations coordinator.



Sue Grainger, consulting forester, Corvallis, OR. Expertise includes reforestation, forestry.



Jim Spitz, consulting forester, Bend, OR. Expertise includes appraisal, Indian forestry.

## ACKNOWLEDGEMENTS

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Alabama-Coushatta	Augustine
Cabazon	Cahuilla
Colville	Eastern Band of Cherokee
Flathead	Hoopa Valley
La Jollai	Lac du Flambeau
Leech Lake	Los Coyotes
Makah	Menominee
Mescalero Apache	Morongo
Mississippi Choctaw	Navajo
Nez Perce	Pala
Penobscot	Quinault
Red Lake	Santa Rosa
Santa Ysabel	Spokane
Swinomish	Tulalip
Warm Springs	White Earth
White Mountain Apache	Yakima
Zuni	

We thank the Native Alaskan corporations who hosted our visit to Alaska: Ahtna, Inc.; Copper River Native Association; Doyon Corp.; Gana-a'Yoo Ltd.; Klukwan Forest Products, Inc.; Tanana Chiefs Conference, Inc.; Tlingit and Haida Central Council.

Our thanks is also extended to the BIA employees at the area offices that we visited, Portland, Phoenix, Navajo, Juneau and Minneapolis, and those at the Aberdeen, Albuquerque, Anadarko, Billings, Eastern, Muskogee and Sacramento who patiently answered our many queries. We also thank those at the Central Office of the BIA, Branch of Forest Resource Planning, National Interagency Fire Center, Geographic Data Service Center, the Office of American Indian Trust and the Administration for Native Americans, U.S. Department of Health and Human Services who helped us with our study.



Many, many other people spoke with us, provided data, analysis, and helped us understand Indian forests and forestry. Among these we wish to acknowledge:

Susan Belo, Graduate Research Assistant, Colorado State University, Fort Collins, CO.

Jim Meteor, consulting forester, Superior Forest Systems, L'Anse, MI.

Ron Trosper, Northern Arizona University, Flagstaff, AZ.

White Earth Land Recovery Project, White Earth, MN.

Dine' C.A.R.E. Tsaille, AZ.

Quinault Allottees Association, Oakville, WA.

Stephen Beckman, Lewis and Clark College, Portland, OR.

Dennis Lynch, Colorado State University, Fort Collins, CO.

Stan Gregory, Professor, Department of Fish and Wildlife, Oregon State University, Corvallis, OR.

Don Sampson, Columbia Basin Fish and Wildlife Authority, Portland, OR.

Mark Philips, Political Analyst, Washington D.C.

James Sizemore, CPA, Portland, OR.

Carol Perry, Consulting editor, Corvallis, OR.

Gary Hanson, Washington Timberland Management Inc., Union, WA.

Sam Radcliffe, George Banzoff Co., Milwaukee, WI.

Lloyd Irland, The Irland Group, Winthrop, Maine.

Jim Johnson, Department of Forestry, Virginia Technical Institute and State University, Blacksburg, VA.

Bob Simeone, Forestry Consultant, Eagle River, WI.

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### List of Abbreviations

ANCSA	Alaska Native Claims Settlement Act
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CFI	Continuous Forest Inventory
FTE	Full Time Equivalent
FY	Fiscal year
GIS	Geographic Information System
IFMAT	Indian Forest Management Assessment Team
ITC	Intertribal Timber Council
MBF	Thousand board-feet
MMBF	Million board-feet
NHPA	National Historic Preservation Act
NIFRMA	National Indian Forest Resources Management Act
PL	Public Law

# EXECUTIVE SUMMARY

## Introduction

Indian forests are vital to tribal communities. They are a source of employment and income and a setting for recreation. They provide habitat for fish and wildlife and sanctuaries for worship and religious ceremonies. They provide materials for shelter, fuel, canoes, clothing, housewares, native medicines and foods, artistic expression, and tribal forest-products enterprises.

Sixteen million acres on 214 reservations in 23 states are forested. Nearly half are timberland, and the rest woodland (forestland with less than 5% crown cover by commercial timber species). Management of these forests provides the backbone of economic activity in many locations. For instance, the BIA estimated that, in 1991, Indian forests and related programs generated over 465 million dollars and supported 40,000 jobs. Of this total, over 180 million dollars and 9,000 jobs benefited non-Indians in areas adjacent to reservations.

Moreover, Indians live with both the environmental and economic consequences of their forest management more intimately than most other people in the U.S. They directly experience the impacts of cutting practices, prescribed fire, grazing, and other potentially controversial activities. They often see the direct relationship between tribal revenue and the economic use of their forests.

The U.S. government has a trust responsibility for managing Indian forests--a responsibility largely carried out by the Bureau of Indian Affairs (BIA) with the involvement of tribal governments. Although the BIA has long contended with vacillating and vague federal policies toward Indian affairs, complex land-ownership patterns, and the inability to secure the resources necessary to meet its obligations, many dedicated BIA professionals have contributed significantly to Indian forest management.

Throughout the BIA's 80-year history, its administrators and other people and organizations have expressed concern that the Indian forestry program has been seriously understaffed and underfinanced. Over the past two decades, Congress, the Administration, and tribal governments have dedicated substantial resources to improving Indian forest management. Significant increases in Congressional appropriations have come about within the last 15 years. Yet concern

about Indian forestry remains shared by both Indian communities, whose well-being is often intimately tied to the health of their forest resources, and the BIA, which has expressed misgivings about its ability to provide necessary forest-management services.

In response to these concerns, the National Indian Forest Resources Management Act (NIFRMA), Title III, Public Law (P.L.) 101-630, directed the Secretary of the Interior, in consultation with the affected Indian tribes, to obtain an independent assessment of the status of Indian forest resources and their management. To meet this mandate, the Secretary contracted with the Intertribal Timber Council (ITC), which selected seven nationally recognized forestry experts to serve as an Indian Forest Management Assessment Team (IFMAT) (see pages i to iii for a description of the IFMAT team and the resource team that assisted it).



*Discussion on ponderosa pine management,  
White Mountain Apache Reservation*

HEMAT's investigation targeted the following eight tasks stipulated for assessment in NIERMA:

- (A) An in-depth analysis of management practices on, and the level of funding for, specific Indian forestland compared with similar federal and private forestlands;
- (B) A survey of the condition of Indian forestlands, including health and productivity levels;
- (C) An evaluation of staffing patterns of forestry organizations of the BIA and of Indian tribes;
- (D) An evaluation of procedures employed in timber-sale administration, including preparation, field supervision, and accountability for proceeds;
- (E) An analysis of the potential for reducing or eliminating relevant administrative procedures, rules, and policies of the BIA consistent with the federal trust responsibility;
- (F) A comprehensive review of the adequacy of Indian forestland management plans, including their compatibility with applicable tribal integrated resource management plans and their ability to meet tribal needs and priorities;
- (G) An evaluation of the feasibility and desirability of establishing minimum standards against which the adequacy of the forestry programs of the BIA in fulfilling its trust responsibility to Indian tribes can be measured; and
- (H) A recommendation of any reforms and increased funding levels necessary to bring Indian forestland management programs to a state-of-the-art condition.



Fig. 1. Redwood Forest.



*Discussion on woodland planning. Navajo Reservation*

As part of its charge, IFMAT also considered special management issues dealing with allotments, Alaska, other ownerships within Indian reservations, and off-reservation lands.

Over 2 years, IFMAT carried out its charge by (1) visiting 33 reservations with timber programs of varying sizes (Figure 1); (2) surveying (through a questionnaire) tribal communities and BIA staff about Indian forest issues; (3) conducting focus groups during reservation visits to further assess tribal perspectives about Indian forestry; (4) comparing forest management on Indian lands with that practiced on similar federal and private lands; (5) surveying reservations about staffing patterns of natural resource professionals other than foresters, and (6) visiting national, area, and agency offices of the BIA.

All photographs in this report are from IFMAT visits.



## Findings

### 1) Tribal members emphasize different visions and goals for their forests than do BIA forestry employees.

- For example, tribal members value resource protection most. Yet BIA forestry employees place relatively less emphasis on these goals and more on the forest's economic benefits.
- The forest's scenic beauty is much more important to tribal members than to BIA forestry employees.
- Tribal members emphasize that an integrative, holistic approach be taken in managing all forest resources, recognizing a multiplicity of use and values. Through funding, staffing, and approach, the BIA has tended to emphasize commercial timber production.
- Both tribal members and BIA agree that better communication and understanding are required.
- Tribal members emphasize that Indian people should play the primary role in making decisions about their forests.

### 2) Generally, a small proportion of tribal members or BIA forestry employees believe that current resource management is good or excellent, but these results varied significantly by activity or resource.

- Less than 25% of tribal members rated management of the following activities or resources as good or excellent: grazing, recreation, water quality and quantity, nontimber forests products, tribal employment, creation of new enterprise, food gathering, spiritual values, visual quality, overall management, and protection from pollution, waste, poaching and trespassing.
- From 25 to 40% of tribal members rated management good or excellent for wildlife, fisheries, wood for tribal use, timber for sale or enterprise use, cultural site

protection, and forest resource protection. Wood for tribal use and timber for sale or enterprise use scored the highest at 40%.

- In general, tribal members and BIA forestry employees were in greater agreement on management quality than on management goals, although differences in ratings of management quality showed up on a number of activities and resources.

### 3) The administrative relationship between the United States government and each tribal government is the key factor affecting the ability of tribes to achieve their forest management goals.

- The concept of trust responsibility in relation to the management of Indian forests has not been clearly defined in law or regulation, although draft trust standards exist for several forest resources and activities. Lack of definition contributes to poor communication between the BIA and the tribes and can make it difficult to evaluate the adequacy of forest management.
- Tribal governments have embraced the concept of self-determination and increasingly are assuming more of the forestry functions previously performed by the BIA. Parallel BIA and tribal lines of authority undermine the prospects for coordinated forest-resource planning and management, in which the suite of forest values of interest to the tribes--timber, water, fish, wildlife, range, and cultural resources--is considered in decision-making.



*Flathead Reservation*



*Indian logging crew, Yakima Reservation*

- The BIA has had difficulty in providing Indians with the variety of technical assistance and management guidance needed for tribes to meet their goals.
  - Placing trust oversight and technical assistance and management guidance in one federal agency—the BIA—has made it difficult to obtain impartial assessment of the quality of this assistance and guidance.
  - Foresters and engineers working on Indian lands are fewer in number and have greater workloads than their counterparts on National Forests. Professionally trained forest road engineers are in especially short supply.
  - The BIA forestry program is not adequately staffed to support coordinated resource planning and management. There are virtually no staff from specialties such as fisheries, wildlife, range, and cultural resources.
  - The grade level for BIA foresters and technicians is lower than that for similar positions within the Forest Service or Bureau of Land Management (BLM). On average, the budget per person for BIA and tribal foresters and technicians is less than four-fifths that of their National Forest counterparts. Moreover, tribal and BIA foresters have significantly less access to continuing education than their Forest Service counterparts.
- 4) Indian forestry is seriously underfunded and understaffed compared with forestry on similar federal and private lands.** Inventories, staffing, and budgets are inadequate for biodiversity assessments and for coordinated resource planning and management on Indian lands.
- Current funding for Indian forestry is only 63% of that for timber production for the National Forests, only 50% of that for timber production for private forestry in the Pacific Northwest, and only 35% of that for coordinated resource management for the National Forests.

- The BIA and tribes are experiencing substantial problems in recruiting and retaining natural resource professionals, in part, because of lower pay, budgets, and benefits than comparable agencies.
- Indians have clearly stated that they would like more Indians managing their lands. Yet, relatively few Indians are in managerial positions within the Indian forestry program.



*Patch cut for timber and wildlife. Penobscot Reservation*

*K. L. Aubrey*

**5) Managers of Indian forests are practicing more ecosystem management now than in the past.** That is, they have begun to shift from a focus on producing commodities to one on maintaining ecological processes critical to sustaining forests.

- Despite funding and staffing difficulties, many Indian forests are places of experimentation and innovation. Some of the most highly developed uneven-aged management anywhere is found on Indian forestlands.
- Timber management practices on Indian forests are generally comparable to those on the National Forests with some qualifications:

Uneven-aged management has been more widely used on Indian forests than on the National Forests, although the National Forests are now rediscovering uneven-aged management.

In general, natural regeneration is relied upon for reforestation more on Indian lands than on the National Forests reflecting, in part, the heavier use of uneven-aged management in Indian forestry.

Even-aged management with clearcutting is used extensively on Indian forests on the west-side of the Cascades in the Pacific Northwest and also in the aspen stands of the Lake States. Clearcutting is also used in mixed-conifer forests of the Intermountain West in stands badly damaged by insects and disease. These practices are similar to those on National Forests and private lands in these areas.

In addition, even-aged management with shelterwood techniques is employed on Indian forests and the National Forests in many regions.

The retention of forest structures at regeneration harvest, such as snags, down logs, and wildlife trees and patches, is being incorporated in forest practices on Indian lands somewhat faster than is occurring on private land, but not as rapidly as on the National Forests.

Recent plantation survival on Indian lands approaches that on the National Forests. Indian lands, though, have a proportionately larger reforestation backlog than do the National Forests. Mechanical control of competing vegetation predominates on both Indian lands and the National Forests while chemical control predominates on private land.

Harvest practices, fire suppression, and lack of development funds have all contributed to a buildup of dense stands on Indian forests. Many acres would benefit from release and thinning in terms of improved growth and reduced chance of catastrophic loss. This thinning backlog is proportionately larger than that of the National Forests.

Silvicultural prescriptions on Indian lands, which guide stand treatments, are sometimes less well developed and provide less justification for treatment choices than on the National Forests.

- Management of roads, water, fisheries, wildlife, and grazing is seriously deficient compared with that on the National Forests (as discussed below).
  - Tribes and the BIA lack sufficient access to research-based information tailored to their needs. Many of the complex and often unique forest-management issues on Indian lands will require research before they can be resolved.
- 6) The health and productivity of Indian forests are mixed, and vary by forest type and geographic location.**
- Ponderosa pine forests, the most widespread commercial forest type on Indian lands, are generally in relatively good ecological condition. Ecological concerns on these forests include low levels of some structural features (e. g., snags), continued emphasis on the harvest of large, old trees, and effects of fire suppression.
  - Ecological conditions in mixed-conifer forests vary. Although uneven-aged management has allowed structurally complex, productive forests to persist in many places, conditions generally are less than ideal and, in most cases, are deteriorating. The major ecological concern is forest health; other concerns include further simplification of stand structure by current harvest practices, effects of fire suppression, and watershed protection.
  - Most pinyon-juniper woodlands are in a deteriorated ecological and economic condition as a result of over-grazing and other agricultural uses, fire suppression, and unregulated harvest of firewood and other forest products. Other woodland types have similar problems.
  - Ecological conditions of Northwest coastal conifer forests are mixed. These highly productive, resilient types are usually clearcut. Brush and logging slash have sometimes delayed regeneration. Thrifty second-growth stands usually develop after har-



*Forested reserve – Warm Springs Reservation*

*J. Frankel*



Figure 1

## Reservations with Significant Timberland



# nd Resources



IFMAT

by IFMAT

## Major Timberland Resources (Category 1)

(More than 100,000 acres of commercial timberland and/or forest land with a harvestable timber base)

1. Jicarilla
2. Mescalero Apache
3. Southern Ute
4. Blackfeet
5. Crow
6. Northern Cheyenne
7. Eastern Band of Cherokee
8. Mississippi Choctaw
9. Passamaquoddy
10. Penobscot
11. Bad River
12. Bois Forte
13. Grand Portage
14. Lac Courte Oreille
15. Lac Du Flambeau
16. Leech Lake
17. Menominee
18. Red Lake
19. Stockbridge/Munsee
20. White Earth
21. Navajo
22. White Mt. Apache
23. Hualapai
24. San Carlos
25. Uintah and Ouray
26. Annette Islands
27. Coeur D'Alene
28. Colville
29. Flathead
30. Grand Ronde
31. Makah
32. Nez Perce
33. Quinault
34. Siletz
35. Spokane
36. Tulalip
37. Umatilla
38. Warm Springs
39. Yakima
40. Hoopa Valley
41. Tule River

## Minor Timberland Resources (Category 2)

(Other reservations with significant timber resources)

42. Ojibwa
43. Pine Ridge
44. Rosebud
45. Turtle Mountain
46. Winnebago
47. Acoma
48. Jicarilla
49. Jemez
50. Laguna
51. Picuris
52. Santa Clara
53. Zuni
54. Alabama/Coushatta
55. Fort Belknap
56. Rocky Boy's
57. Wind River
58. Big Cypress/Brighton
59. Narragansett
60. Pequot
61. Fond Du Lac
62. L'Anse
63. Mille Lacs
64. Potawatomi
65. Red Cliff
66. Cherokee
67. Chickasaw
68. Choctaw
69. Chehalis
70. Fort Hall
71. Kalispel
72. Lummi
73. Muckleshoot
74. Nisqually
75. Port Gamble
76. Port Madison
77. Quileute
78. Skokomish
79. Squaxin Island
80. Swinomish
81. Ford Bidwell
82. Round Valley
83. Yurok

## Other Trust Lands Visited

84. Alaska Trust Properties
85. Southern California Agency (Santa Rosa, Los Coyotes, La Jollai, Santa Ysabel, Cabazon, Augustine, Pala, Cahuilla, Murongui)

Boldface indicates those reservations that have been visited by IFMAT.

vest, though, if they are promptly regenerated, but the resulting stands generally lack structural complexity and species diversity. Forest-health issues are minimal.

- Structural complexity and species composition of many eastern hardwood-pine stands have been substantially reduced although there are some significant exceptions. Concerns include low economic value of the current forest, complex ownership patterns, and difficulties in regenerating desired species.
- Overall, on sampled reservations, timber volume growth equals or slightly exceeds recent harvest volumes in the Northwest (east-side) and the East, whereas recent harvest exceeds growth in the Northwest (west-side), the Southwest, and, perhaps, the Lake States.
- Some plants used for craft, subsistence, and medicine are becoming increasingly scarce. Decreased availability of appropriate forest conditions hampers traditional practices.
- Sufficient structural complexity, in terms of tree species and size, still exists on many reservation forests to provide options for developing a wide range of forest structures. However, this flexibility could disappear within a decade under some BIA-proposed management plans, which emphasize harvesting large, old trees and stands.
- Populations of big-game species, such as deer and elk, generally appear to meet the needs of the larger reservations. However, long-term population trends or habitat conditions rarely are monitored, and sensitive, threatened, and endangered species sometimes receive inadequate attention.
- Watershed, riparian (streamside) areas, and stream channels often show signs of deterioration from past timber harvest, roading, and grazing.
- Many aquatic species are less plentiful and diverse than in the past.

- Livestock grazing on reservations is largely uncontrolled, with resulting adverse effects on streams and upland areas.
- Monitoring the consequences of resource management activities is fundamental to any management program; yet monitoring programs are largely absent on Indian forestlands.
- Prescribed burning needs to receive considerably more attention as a tool for reestablishing and maintaining healthy mixed-conifer stands in the Intermountain West and for managing pinyon-juniper woodlands.

#### 7) Roads have contributed to a number of environmental problems.

- Many reservations show extensive soil compaction from roads and skid trails.
- Most reservations visited had numerous roads that were poorly designed and inadequately drained. Roads sometimes were placed up stream channels, where they constrict water flows and preclude streamside vegetation.
- The lack of an all-weather road system is a major obstacle to implementing coordinated resource management.



Many reservations have extensive road systems. Navajo Reservation

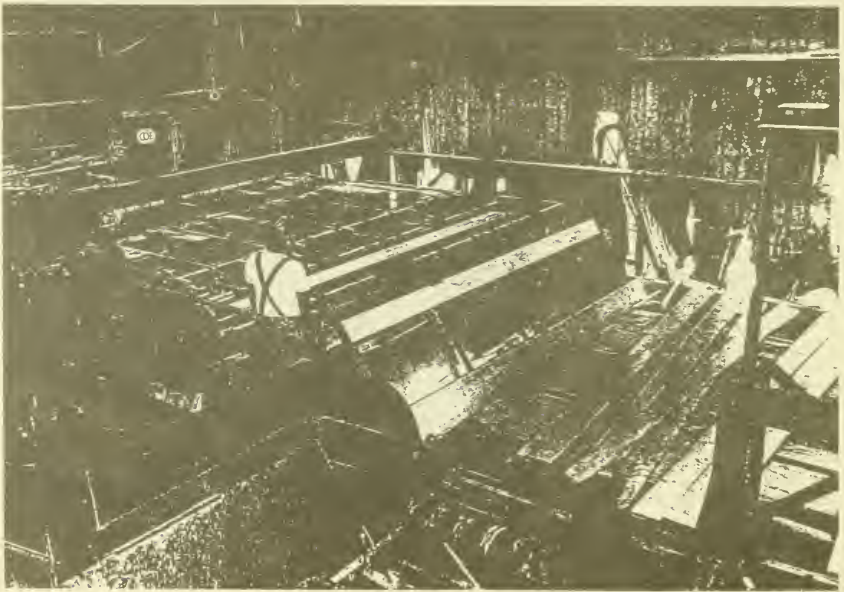
**8) Opportunities exist to substantially increase income and other benefits from timber harvests.**

- On average, timber-sale planning is inferior to that in the Forest Service and BLM because of insufficient or inadequately trained personnel, or lack of funds.
- Information on markets and the characteristics of future timber supply often is not available to managers of forest-products enterprises to help them make good log-allocation decisions.
- Some logging contracting procedures, such as not allowing competitive bidding, can result in passing on excessive costs to the tribe.
- Some timber-sale policies do not encourage full utilization of raw material. As an example, the common practice of assigning an average price for each species discourages utilization of smaller logs which are worth less to the purchaser than the average price.

- Better quality control in tribal forest-products enterprises could increase the value added through manufacture. Few such enterprises have professional quality-control personnel.
- Some stumpage transfer policies underestimate log value and thus do not provide appropriate incentives or enable accurate evaluation of log-processing decisions.

**9) Forest management plans for reservation forests have the potential for meeting many tribal goals and priorities but a narrow definition of sustained yield management, inadequate analysis in some cases, and lack of funding and personnel make attainment of goals difficult.**

- Forest management plans contain comprehensive objectives for management of commercial forests. A standard set of goals is provided by the federal government which address maintenance of forest productivity, forest regulation, economic contributions to tribal self-sufficiency, and the protection and management of the forest resource to benefit recreational, cultural, aesthetic, water quality,



*Tribal forest products enterprise. White Mountain Apache Reservation*





*Aspen stands on the shores of Red Lake. Red Lake Reservation*

N. Johnson

wildlife, and other resources. These goals have evolved through time with increasing involvement of the tribes themselves. In addition, each tribal government can add an additional, individually-tailored set of goals.

- On most reservations sampled, the tribal government has endorsed the current forest management plan. Before endorsement, however, the tribes often add additional goals and limits, especially those relating to forest protection.
- Federal guidance for forest planning increasingly calls for the tribes to take a strong leadership position in development of forest plans. Current regulations for forest planning call for tribal endorsement of forest plans. New draft regulations, based on NIFRMA and prepared with tribal involvement, also call for active tribal participation and leadership in developing the plans.
- An overly restrictive definition of sustained yield management can prevent attainment of tribal goals. Federal regulations currently call for harvest schedules to be directed toward achieving an approximate balance at the earliest practical time between maximum net growth and harvest. This definition of sustained yield management can result in overly rapid conversion of existing stands, erratic harvest levels, and a future forest at odds with tribal goals. New draft regulations would deal with some, but not all, of these potential difficulties.
- Harvest-scheduling techniques used by the BIA generally have not kept up with those of other agencies and are inadequate to support coordinated resource planning. Lack of an adequate sustainability check in these techniques has allowed higher-than-sustainable harvest levels to be developed without adequate review.
- The BIA's Continuous Forest Inventory (CFI) system for planning and policy analysis rates highly in comparison to similar systems in other federal agencies. Some problems exist, however, in collecting and using CFI data, including the lack of a central repository for CFI data and a system to make the data readily available, incon-

Alaska, and the BIA often has reservations in the future on commercial aspects of forest resources, and flow from around inventory analysis at BIA area and national offices.

- Absence of technical presentation of the forest plan largely precludes anyone but planners from understanding their results. Few pictorial or graphical descriptions are provided that address the future forest that will be created under the plan or the aggregate harvest/growth/inventory conditions over time.
- Alternatives developed in forest planning often are highly limited in the choices provided. Some forest management plans provide very few alternatives. Others describe land use choices but do not also describe choices for future forest structure.
- Consideration of all forest resources, as called for in forest plan goals, has been difficult to achieve. Concentration on commercial timber production, including the overly restrictive definition of sustained yield, lack of funding, and lack of natural resource professionals other than foresters have all

contributed to this problem. The new rule regulations, however, could help broaden the focus and could help forest management plans fit better into the coordinated resource plans of the future.

- Integrating cultural values and traditional knowledge into forest management needs special attention. Lack of knowledge and/or interest on the part of forestry staffs, combined with the sensitive and somewhat confidential nature of traditional knowledge, has led to planning deficiencies. Tribal cultural staffs, where they exist, generally are small and barely able to keep up with timber sale requirements and off-reservation concerns, let alone establish baseline data necessary for planning.
- Recent BIA policy calling for development of "integrated resource management plans" has not generally been successfully implemented. These coordinated plans would provide overall direction for land use on reservations, and would have forest management plans as one component. Completion of coordinated (integrated) resource management plans has been difficult to accomplish on most reservations, in part, due to lack of clear examples of the purpose, content, and use of these plans, a relatively low priority for their development in the BIA, and the absence of adequate funding and resource management expertise.

#### 10) A number of issues require special planning and management.

- Allotments. The allotment of substantial portions of forest trust lands to individuals on some reservations has greatly complicated land management and increased the difficulty of coordinating management. This situation frustrates both allottees and tribal natural resource managers. Management costs for individual allotments are greater and, in many cases, services to allotments are poorer than those enjoyed by tribal trust lands.
- Alaska. The BIA has trust responsibilities in Alaska for trust lands of individual allottees and the Annette Islands reservation. Obstacles to forest management in Alaska include difficult topographic and seasonal operating conditions; poorly developed or nonexistent transportation systems; long distances to markets; limited forest inventories, particularly in the interior; few forest management plans; and an insufficient silvicultural research base. Staffing and funding for trust lands are inadequate to provide for planning, sale prepara-



Warm Springs Reservation.



*Discussion on Eastern white pine management. Menominee Reservation*

*J. Franklin*

ration, administration, and forest development on both the reservation and allotments. In addition to the trust lands, the federal government, under P.L. 101-630, has technical assistance agreements to native corporations formed under the Alaska Native Claims Settlement Act. Currently, no funds have been appropriated to provide this technical assistance.

- **Other ownerships within Indian reservations.** A variety of owners control forestland within Indian reservation boundaries, including federal agencies (Forest Service, BLM, Fish and Wildlife Service), states, counties, private forest industry, and nonindustrial private owners. This mixture greatly complicates planning and management of Indian forests, especially with the new emphasis on ecosystem management. There often is little rationale for maintaining federal land ownership within the boundaries of Indian reservations.
- **Off-reservation lands.** Monitoring and participation in the management of off-reservation lands, where many tribes have treaty rights, greatly increase the cost and staffing needs of tribal programs.

## **Findings Summary**

There is a strong potential for managed Indian forests to serve as models of sustainability. Reservations are permanent homelands where Indians live intimately with the environmental and economic consequences of forest-management decisions. Indians want their forests for a complex mix of uses--timber harvest, livestock grazing, firewood, gathering, firewood, fishing, scenic beauty, spiritual sanctuary--and have a compelling need to balance conflicting interests. They have a well-recognized commitment to protect the resources that are both their life and their legacy.

However, as noted above, BIAF's four most significant findings are (1) the gap between the visions that Indians express for their forests and how these forests have been managed, (2) the gap in funding between Indian forests and other federal and private lands, (3) the lack of coordinated resource planning and management, and (4) the lack of a single method of setting and overseeing trust standards for Indian forestry.

## Recommendations

The following recommendations are intended to lay the foundation for the future--to help tribes realize the full potential of their valuable, renewable forest resources. They are not meant to demean the contributions of the many dedicated people who have managed Indian forests.

### Major Recommendation

**Redefine the U.S. government's role in discharging its trust responsibility so that tribal governments have primary responsibility for directing Indian forestry.** The U.S. government should provide financial support, technical assistance, research access, and trust oversight. Technical assistance and trust oversight should be independent of each other.

The new arrangement should reflect the following:

- Each tribe should be the principal agent responsible for crafting, implementing, and monitoring a coordinated resource management plan congruent with its vision for forests and forest management.
- Standards for evaluating performance in meeting the trust responsibility should be agreed upon between each tribal government and the Secretary of the Interior. Ultimately, the Secretary's responsibility should move from signing off on individual timber sales, as is now done, to signing off on coordinated resource plans. Each tribe would then be responsible for preparing standards as part of the plans against which its performance could be measured through both tribal monitoring and trust oversight.
- BIA forestry should be reorganized to separate technical assistance from trust oversight. The BIA should retain technical assistance, but trust oversight should be delegated to an independent commission.
- Technical assistance from the BIA should include full support for coordinated resource planning and management and also research access.
- A single manager should be responsible for delivering the entire natural-resource program at the local level.

In one possible rearrangement (Figure 2), the tribal vision for forests is transmitted through the tribal government to the tribe's natural-resource manager. With technical assistance from the federal government, the tribe's natural resource staff then develops a coordinated resource management plan defining objectives, standards, operations plans, and monitoring procedures. U.S. government funds are provided to tribal governments under the conditions of the trust standards agreed upon between the Secretary of the Interior and the tribe. Federal oversight is via an independent trust oversight commission, which reviews the initial coordinated resource plan and periodically assesses whether the standards agreed to by the tribe and the Secretary of the Interior are being met. This commission might operate largely through regional boards formed from local technical experts sensitive to regional differences.

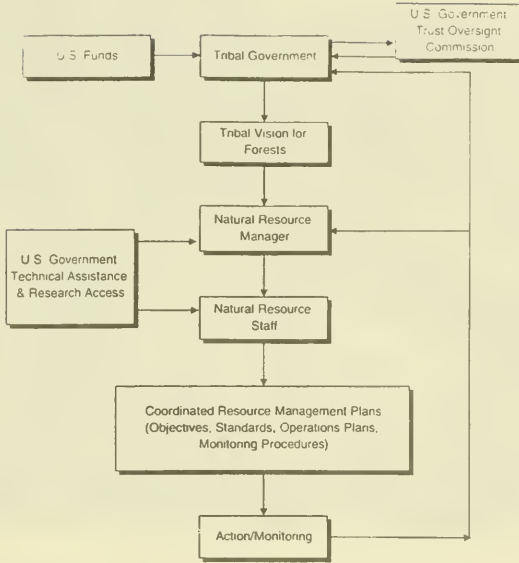
One challenge is managing the transition to this new arrangement. The shift and how it occurs rest primarily with the tribes themselves; their degree of preparedness and comfort levels will dictate the timetable and mechanisms.

### Supporting Recommendations

**1) Develop tribally defined trust standards that are easy to monitor and that clarify trust oversight.** We believe the following principles should underlie those standards:

- (a) A tribal vision for forests and their management should be articulated where one does not now exist;
- (b) Trust standards should be established and relate to this tribal vision;
- (c) Each tribe should write and approve the standards with local involvement;
- (d) The agreed-upon standards should have yardsticks for measuring the achievement of trust responsibility, with measurement techniques determined before standards are approved;
- (e) To the degree possible, standards should measure achievement of desired conditions and outcomes (performance) rather than inputs, techniques, or technologies; and
- (f) Standards should encourage and reward compliance and promote efficient use of resources.





**Figure 2.** One possible form of the recommended organization of federal trust responsibility to Indian forest management.



*Allottee's cabin. Copper River, Alaska.*

*K. G. Gifford*

In addition, the U.S. government should provide, as part of the trust responsibility, technical assistance to tribal forest products enterprises and reports to the tribes on enterprise performance.

**2) Increase base-line funding and investment for Indian forest management to levels comparable to those of the National Forests.**

- An increase in baseline funding of \$121 million per year (that is, a 182% increase) is required to put coordinated resource planning and management on Indian reservations on par with that of the National Forests (see Table 1).
- This level of funding would include an increase of over \$34 million per year to put per-acre funding for timber production on Indian reservations on a par with that of National Forests. This additional money would be used primarily to provide increased resources for timber sale preparation, environmental coordination, timber sale administration, engineering support, and transportation development and maintenance. At recent harvest rates this increase amounts to about \$40 per thousand board feet.

- Investments of over \$200 million are required to correct deficiencies in road systems which will promote a stable transportation network and improve watershed conditions.

- Significant investments are required to address forest development backlogs (that is, forested acres requiring additional regeneration or thinning), especially where overly dense stands increase the probability of catastrophic loss. To maximize wood production, \$150 million dollars might be needed. Coordinated resource plans, though, should define the investment level that best meets tribal goals.

**3) Protect the health and productivity of Indian forests through ecosystem management.**

- Forest health and productivity should be monitored over the long term, and inventorying and monitoring of wildlife habitats and populations greatly increased (See Footnote 1, Table 1).
- More thorough and sophisticated silvicultural prescriptions should be written to guide stand treatment.

**Table 1.** Summary of major funding recommendations<sup>1</sup>

	Existing Funding MM \$/yr	Recommended Funding MM \$/yr	Increase MM \$/yr	Percent Increase %
Continuing Base Program for Coordinated Management	66.2 <sup>2</sup>	187.0	120.8 <sup>3</sup>	182
Prescribed Burning to Maintain Forest Health	—	5.0	5.0	—
Trust Oversight Commission <sup>4</sup>	—	1.0	1.0	—
Total	66.2	193.0	126.8	192

In addition, a one-time investment of \$200 million is needed for forest roads, a one-time investment of \$5 million is needed to set up a monitoring program, and a significant investment is needed to reduce the forest development backlog and restore streams.

Contains BIA Forestry Base funding of 40.8 million, Indian forestry contributions of 17.9 million, and an estimated 7.0 million combined additional federal and tribal funding for other natural resource support, and 0.5 million for woodlands.

Increases funding to levels comparable to the National Forests, including an increase of 34 million for timber production.

<sup>4</sup> First estimate of cost of operating the trust oversight commission



*Stream restoration work. Colville Reservation*

*K. Gabriel*

- Thinning and partial cutting of mixed-conifer stands should be accelerated to reduce the presence of disease and insect-resistant species.
  - Watershed and stream protection should have increased priority, as should improving forest roads.
  - Significant investments are required to restore streams. Sediment reduction programs, riparian shrub development, streamside forest silvicultural prescriptions (thinning, planting, fencing) and inchannel reconstruction are a necessary part of ecosystem restoration. Such actions will require a watershed assessment before commencing.
  - Use of fire--prescribed burning--to maintain forest health should be increased, especially in the ponderosa pine, mixed-conifer, and pinyon-juniper forest types (See Table 1).
  - Efforts to protect and enhance habitat for plants of special cultural significance should be increased.
  - Where allotments form a large fraction of trust lands, incentives should be provided to encourage allottees to join with tribes or form associations to do coordinated resource planning.
  - BIA and tribal access to research-based information tailored to their needs, and to the people and organizations who undertake the research, should be improved.
  - An adaptive management approach, in which monitoring provides feedback on operational practices, should be built into forestry on Indian lands. Ecosystem management demands an approach that is flexible (responding to new information) and site specific. To capitalize on such efforts already underway on Indian forests will require a much greater emphasis than currently exists on training, education, and communication.
- 4) Bring staffing levels to parity with those of National Forests having similar resource management objectives.
- Deficiencies in staffing for ecology and natural resources such as wildlife, range, soils, archeology, fisheries and hydrology should be eliminated.

- Professional engineering staff should be increased to support coordinated resource planning and address deficiencies in reservation road systems.
- Recruitment and retention measures should be developed, with special emphasis on natural resource specialties other than forestry.
- Training and education programs authorized by NIFRMA should be fully funded.
- Review timber sale policies to verify that sale procedures lead to maximum benefit for the tribe.
- Promote competitive bidding for tribal logging.
- Transfer stumpage at market value to forest enterprises to provide useful value signals to enterprise managers.
- Develop auditing procedures to document the competitiveness of the forest product enterprise.

**5) Increase tree value through improved forest management, timber harvest and forest enterprise performance.**

- Train planning personnel in the value of improved tree-inventory information.
- Improve communication between forest planning personnel and forest enterprises.
- Train forest administrators and harvesting managers to recognize the importance of improved log cutting practices.

**6) Greatly strengthen coordinated forest resource planning and natural resource inventorying.**

- Forest resource planning and management should be based on tribal goals and objectives derived from each tribe's vision for its forest.
- Coordinated resource plans should guide Indian forest management via clearly defined objectives, standards, operations plans, and monitoring procedures. Such documents should be the centerpiece of forest planning and the guide for implementing ecosystem management. Technical assistance from the federal government should aid in the preparation and implementation of these plans.



*Uneven-aged management, Yakima Reservation*



- The current and proposed interpretation of sustained yield management should be changed to one that focuses on the protection of underlying ecological processes and forest productivity.
- Plan results should be accessible to the lay reader. Graphs, figures, pictures and charts should clearly display the type of the forest that will be produced under the plan, the proposed harvest level over time, and the associated growth and inventory.
- Alternatives for forest management should be developed in planning that systematically vary both the land use allocations and the forests that could be developed under a particular land use.
- Harvest-scheduling techniques should be modernized and should include an up-to-date sustainability check. Inventory/planning support should be allocated to helping reservations in harvest scheduling. Some reservations and BIA area offices have started using modern operations-research tools for harvest scheduling; this work should be encouraged.



*Overstocked stand, Yakima Reservation*

*N. Johnson*

- The BIA's CFI system should be improved by (a) developing standards for maintaining or improving the integrity of CFI data, (b) allowing the large reservations to process their own data, (c) consolidating inventory support staffs at the national and area offices, (d) increasing the number of support staff educated and experienced in biometrics, computer programming, and database design and management, (e) working toward creating common data structures and reporting systems, and (f) broadening the scope of the data collected to include measures of ecosystem performance such as understory vegetation, snag characteristics, and dead and down wood.

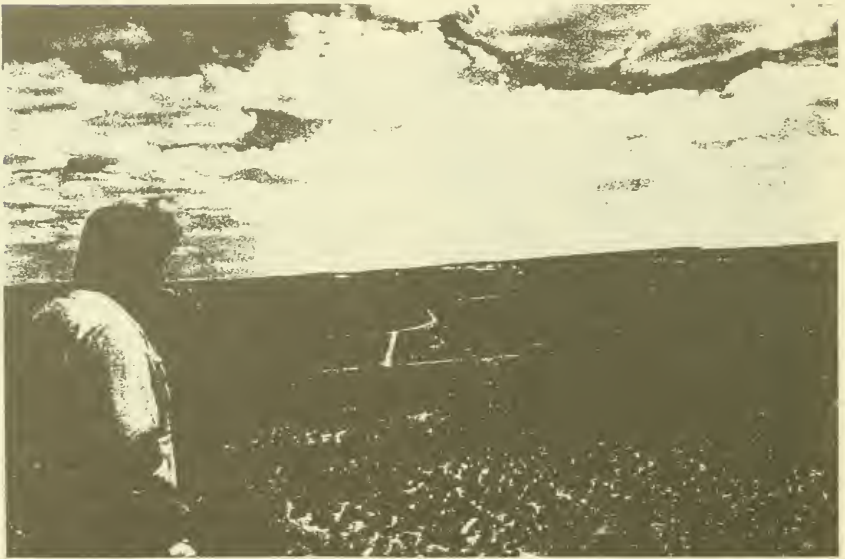
#### **7) Address issues requiring special planning and management.**

- **Allotments.** The greater demands on staff and funding to manage allotments should be recognized. Financial mechanisms should be considered for tribes to purchase allotments for common ownership from allottees who wish to sell.
- **Alaska.** The level of federal funding necessary to provide management services for similar trust lands in other regions should be compared to that in Alaska and differences evaluated. Owners of trust lands and native corporations should be assisted in developing visions for their forests and encouraged to work cooperatively toward their goals. Trust rights of allottees should be safeguarded through agreed upon trust standards between the Secretary of the Interior and regional or village corporations that want to provide forestry services to allottees. Regional expertise in forestry services should be bolstered by encouraging regional corporations with substantial timber holdings to develop natural resource staffs through natural resource education and technical training. The technical assistance program to native corporations authorized under P.L. 101-630 should be developed and funded.
- **Other ownerships within Indian reservations.** Federal forestland within reservations should be returned to the tribes if they wish to claim it. The U.S. government also should help facilitate cooperative management of all forestlands within reservations.
- **Off-reservation lands.** Off-reservation planning and management tasks should be recognized as part of coordinated resource planning to determine funding and staffing needs.

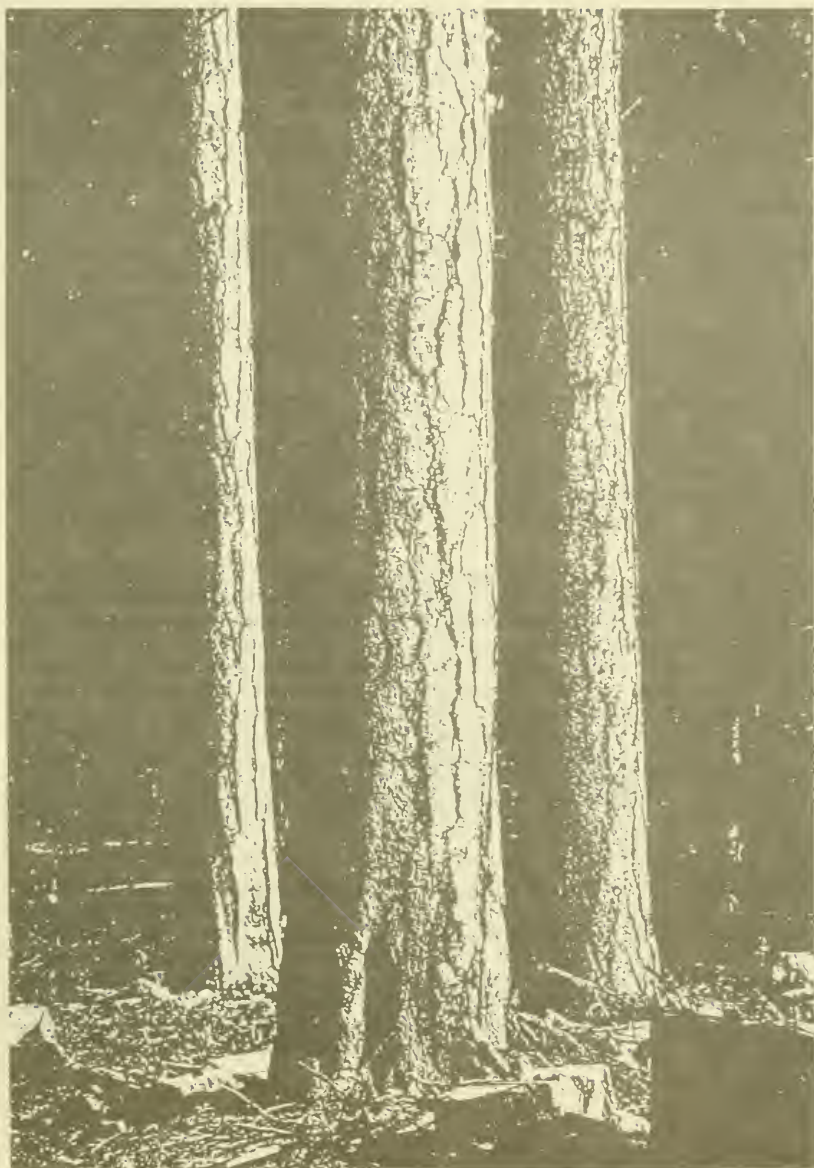
### *Recommendations Summary*

Management of Indian forests can be substantially improved by reconciling the relationship between the U. S. government and the tribes, supported by increased funding and other measures. These actions place Indians firmly in control of their forests and provide the technical and financial means for them to reach their visions for these lands.

We believe that considerable management flexibility still exists on Indian forestlands, where many innovative approaches are already being tried. Further, we believe that others have much to learn from Indian forestry and the holistic Indian view of forests and people. But, it is urgent that more attention and resources be directed soon to Indian forests by Congress. Otherwise, options will be irretrievably lost and, with them, a major opportunity to bring Indian forests up to management standards of federal lands such as the National Forests and to provide widely useful examples of integrated forest management.



*Pinyon-jumper woodlands, Zuni Reservation*



*Ponderosa Pine, Navajo Reservation*

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SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON  
THE NATIONAL INDIAN FOREST RESOURCES MANAGEMENT ACT  
SEPTEMBER 20, 1995

Mr. Chairman, members of the Committee, I am Jaime Pinkham, President of the Intertribal Timber Council (I.T.C.) and Natural Resources Manager for the Nez Perce Tribe in Idaho. It is my distinct pleasure to be here today to report to the Committee on the implementation of the National Indian Forest Resources Management Act. The I.T.C. is very grateful that the Committee has taken the time, particularly during these hectic months, to look into the status of the Indian forestry act.

I'd like to take a moment to give you some background on the Intertribal Timber Council. The organization was started almost twenty years ago when several tribes decided it would be more productive, would produce better Indian forests and a better B.I.A. Forestry program, to work cooperatively with the Bureau rather than engage it in confrontation. To that end, a symposium was proposed and held, where the timber tribes, the Bureau, and other parties expert in forestry, such as academia and industry, shared views, aired concerns, and examined constructive suggestions regarding tribal forests. The result was a success. The B.I.A.'s Forestry program did not change overnight, but barriers were lowered, common ground was discovered, and unified goals were identified. We believe the program has become one of the B.I.A.'s best.

Shortly thereafter, the participating tribes formed the Intertribal Timber Council. Today, the I.T.C. consists of more than sixty tribal governments and Alaska Native organizations. Only tribes and Alaska Native organizations can be I.T.C. members, and as a general rule, tribal delegates to I.T.C. are from their elected governing bodies. Our Board and our committees consist of employees and officials of member tribes and Alaska Native organizations, and the considerable amount of time they spend on I.T.C. activities is all donated.



In April of this year, the I.T.C. held the 19th Symposium. More than 400 attended. As with almost all of our Symposia, we examined the host tribe's forest and discussed their forestry practices - this year, the Yakama's. The Symposium is principally dedicated to multi-day workshops that closely examine specifically identified forestry issues of concern. The workshops generate findings and recommendations to help guide the tribes and the B.I.A. in addressing these issues. The proceedings of the Symposium are published each year and distributed to participants. We also honor members of our profession for exemplary work, and we award modest college scholarships from donated funds to several students pursuing natural resource studies. In the Symposium's general session, presentations are made on a wide range of contemporary issues confronting Indian forestry. In fact, this year's principal guest speaker was your Chief of Staff, Steve Heeley. He was exceptionally well received.

Over the years, and particularly in recent years, the I.T.C. has been called upon to participate in an increasing range of activities. We issue regular newsletters and bulletins to our membership. We have sponsored seminars and field workshops on improving tribal management of their forest resources and developing their leadership skills. In addition to our work with the tribes, we have been invited to appear before or participate in an increasing number of groups and forums, both professional, such as the Society of American Foresters or the Forestry Roundtable, and governmental, such as the President's Forest Plan in the Northwest and this body.

Although our responsibilities are growing, it is a source of pride for us that the I.T.C. remains a very lean organization; until very recently, we have had only one full time employee who principally organizes the Symposium but who also staffs the small office and oversees the myriad day-to-day details needed to keep the organization functioning. Otherwise, almost all of the I.T.C.'s activities have been carried out through the contributed efforts of our membership. Within the last year, however, the I.T.C.'s ability to meet the requests made of it by the Administration (such as participation in the President's Forest Plan), the tribes, and the Congress has been stretched to the point that tribal voluntary contributions can no longer cover them. To help meet these commitments, we have hired a Technical Specialist, along with a part time clerk, for a total staff of two and a half people.

In carrying out our activities, it is always clear to us, to the I.T.C., that we do not directly speak for the individual timber tribes. We will not, we cannot, supplant the tribal sovereigns.

#### LEGISLATION

The I.T.C. also monitors, reports on, and on occasion, comments upon, federal legislation. Over the years, this has included annual appropriations, trade and environmental bills, and resource issues before Congress.

It has been a source of particular gratification that, at the invitation of this Committee, the I.T.C. was asked to help with tribal participation in the National Indian Forest Resources Management Act (NIFRMA), Title III of Public Law 101-630. Chairman McCain, we applaud your leadership and commitment on that legislation and your dedication to Indian resource issues.

From our perspective, NIFRMA is a model piece of legislation. You offered the tribes and the I.T.C. frequent opportunities for consultation in the development of the bill, and you listened carefully to comments and concerns at every stage of the bill's consideration. It is pleasing to us, and we hope it is pleasing to you, that the Forestry Act was drawn upon as a prototype for the American Indian Agricultural Resources Management Act and for the fish and wildlife legislation.

We believe NIFRMA is the single most important statute enacted in the history of Indian natural resources generally, and forestry in particular. Prior to the Act, B.I.A. Forestry programs were principally operated under the authority of the Snyder Act. NIFRMA replaced that with a comprehensive statutory framework embracing a broad view of Indian forests. It specifically acknowledged the federal trust responsibility and, within that trust, recognized the tribal primacy in determining the use of our forests. The Act addresses a diversity of forest management regimes, from commercial uses to cultural and aesthetic considerations. It provides clear guidance on tribal participation in forest management expenses, and is forward-looking, encompassing forestry education efforts and the prospect of integrated resource management plans.

Perhaps most importantly, NIFRMA is a flexible statute, allowing for the diversity of tribes, their forests, and their visions for their forests. It does not, and really could not, dictate broad management criteria to apply to all tribal forests; there is simply too great a diversity of tribes and of tribal priorities for their forests.

Instead, NIFRMA seeks to pursue and achieve improvements in the management of Indian forests through tribal initiative and monitoring. The Act requires that forest management plans for individual Indian forests include tribally specified objectives, the requirements necessary to meet those objectives, and detailed standards against which accomplishment of the plan's objectives can be evaluated. Through this means, over time, tribes and the U.S. Government can keep track of whether the tribal and federal objectives are being fulfilled.

This concept is carried through to the national level in two ways. First, the Bureau of Indian Affairs is required to file annual reports with the Congress on the status of Indian forests, including whether the objectives and standards in forest management plans are being met. In this way, Congress should be able to easily track the success or failure of Indian forest management on a year-by-year, tribe-by-tribe basis. Second, the Act requires that a comprehensive independent assessment be conducted of Indian forests and the management practices thereon, that comparative

follow-up independent assessments be conducted every ten years, and that these assessments be reported to Congress and the tribes. This on-going independent review of Indian forests is to provide an impartial and professional yardstick by which to gauge the broader conduct and trends in Indian forestry.

#### IFMAT

We are pleased that the initial independent national assessment required in the Indian forestry act has been accomplished. With the help of many tribes, funds were secured through a combination of appropriations, the Administration for Native Americans, and the Bureau. The Intertribal Timber Council was awarded the task of administering the implementation of the assessment. The report of the Indian Forest Management Assessment Team, or IFMAT, headed by Dr. John Gordon of Yale University, was delivered on time in November of 1993.

Dr. Gordon is here today to present the findings and recommendations of the IFMAT report. Dr. Gary Morishima, a Technical Advisor to the Quinault Nation and an I.T.C. Board member since our inception, is also here to discuss the formation of the team, and what the I.T.C. is doing to follow-up on its findings and recommendations. So, I am leaving the detailed discussion of IFMAT to them.

#### NIFRMA IMPLEMENTATION

Mr. Chairman, implementation of NIFRMA is a multi-faceted undertaking. Because NIFRMA is a comprehensive Act spanning the breadth of the Bureau's Forestry program, some activities encompassed in the Act were already on-going at its time of enactment. Some new forestry activities initiated under the Act have already been implemented, such as the Forest Lands Assistance Account, the direct tribal receipt of timber payments, and the annual B.I.A. Indian forest status report to Congress. As I described earlier, it is essential that these annual reports identify and evaluate compliance with tribal goals and objectives in forest management plans if the central premise of NIFRMA is to be fulfilled. Unfortunately, the 1994 report submitted to the Committee in June, 1995, is very inadequate in this regard. While this could be a consequence of the delayed initiation of many of NIFRMA's provisions or insufficient B.I.A. manpower, the report needs to be improved if it is to be any utility in tracking progress in the management of tribal forests.

The initial IFMAT report, as just mentioned, has also been completed, and the guidance provided by its observations, findings, and recommendations will continue to be drawn upon by the I.T.C. and the tribes in the years to come as a reference point and as a wellspring for efforts to improve Indian forestry.

Other elements of the Act that need regulations to be implemented in the field, however, have been held up by the seemingly interminable regulatory review process within the Administration. Mr. Virden's testimony today reviews the many delays that the Forestry Act has encountered, the most recent of which is a delay by the

Department of Interior's Office of Regulatory Affairs to convert the all-but-final regulations into "plain english" as a part of the Administration's reinvention of government.

Mr. Chairman, as Dr. Morishima will describe, the B.I.A.'s Division of Forestry continued the cooperative spirit in which the Congress worked with the timber tribes on this Act by directly bringing the tribes into the regulatory drafting process and making strong efforts to regionally consult with all tribes on the Act and its regulations. It has been, and continues to be, the pitfalls and blind alleys in other parts of the Department and Administration that are slowing the regulation's final publication.

This most recent unilateral decision on the part of the Office of Regulatory Affairs is particularly disturbing. Tribes, with the Bureau and the Interior Solicitors, have labored over these regulations for years. The exact wording in some sections, such as timber trespass, is the result of careful discussions between the parties and ought not be tampered with. The Office of Regulatory Affairs did not share its "plain english" efforts with the tribes, and it is only because the B.I.A. alerted us to this undertaking that we are even aware of it. Last week, the Bureau provided us with the 130 page "plain english" draft. At the time of the writing of this testimony, Dr. Morishima, who was deeply involved in the development of NIFRMA's regulations, has only had a brief opportunity to review the "plain english" version, but unfortunately, that alone has revealed substantive deletions and changes of intent and effect from the version originally submitted for final publication.

Mr. Chairman, the "plain english" effort has already added about a month to the regulatory clearance process. If we now have to sort out the language in the "plain english" version, additional months are sure to be added. Instead, we ask that the "plain english" effort be set aside and that the regulations as originally submitted for final publication be promptly implemented. We hope that you and the Committee will be able to assist in this effort.

As a last note regarding the Act's implementation, it should be borne in mind that an important part of the Act's efforts to bring improvement to Indian forests will require years to fully take effect. That is the requirement that forest management plans, in addition to adopting tribal objectives, contain funding and staffing standards necessary to carry out the plan, and specific quantitative criteria against which compliance with the plan will be measured. Because forest management plans are on ten year cycles, incorporation of these compliance measurement requirements into the plans will take time as existing plans expire and come up for renewal. Thereafter, it will take time, as forests take time to grow, to see if compliance is occurring.

#### APPROPRIATIONS LIMITATIONS

Unfortunately, given the immediate course of federal appropriations for tribes,



the B.I.A. Forestry program may crash before the monitoring system can even be put in place. Mr. Chairman, we appreciate that you and some of your colleagues are doing all you can to try to rectify the situation. We are very grateful, and the tribes are lending all the active support they can muster. We also realize that, when all is said and done, we will have to face the reality of the final funding level. But, nevertheless, for your information, for the record, for history, we are compelled to comment.

Even at FY 1995 levels, funding to fulfill the federal government's legally binding trust obligation to manage the Indian forest resource is insufficient and less than funding for comparative activities in the U.S. Forest Service or B.L.M.. This insufficiency, and its consequences, have been repeatedly and thoroughly documented over the years, including in NIFRMA, its Senate and House reports, and more recently in the IFMAT report. While some additional funding has been provided over the years, the insufficiencies, and the disparities, have not been substantially narrowed. A major contributing factor to this shortfall has been the steadily increasing regulatory demands that the U.S. government has piled on Indian lands, almost always without the corresponding necessary resources. Indian lands are essentially private lands. The federal trust is to protect the land and its resources for us, yet the federal trust also has been construed as subjecting our lands and resources to an unyielding flood of federal regulation. Compliance requirements divert our limited forestry resources from other management activities and slow the tribes' ability to respond to market changes. We are put at a disadvantage to others in the marketplace, and as funds for harvest administration are shifted elsewhere, our harvest income falls, and tribal revenues vitally needed for basic governmental services are diminished.

These "unfunded mandates" have risen to such a level of concern among the tribes and the B.I.A. that the Office of Trust Responsibility conducted a 1994 Unfunded Environmental Mandate Study, dated April 24, 1995. The Study found:

- "The federal government, responding to environmental protection needs, had encumbered the development of tribal programs and reservation economies with a broad spectrum of legislated and regulatory mandates for which it had failed to appropriate funding to allow compliance by the BIA and tribal governments."
- "An average national funding deficit of approximately 46 million dollars (1993 dollars) currently exists to minimally comply with the present statutory environmental mandates imposed on Indian lands and resources."
- "Most respondents" [to the Study's survey] "(BIA as well as tribal) were found having to address environmental mandate compliance as ancillary function beyond their normal duties and were individually limited in their availability of time and adequacy of training and experience relative to most mandates to which they are assigned responsibility."

Despite these findings, no budgetary relief has been sought by the Administration or appropriated by Congress.

Mr. Chairman, this is where we stand today. If the Senate's recommended FY 1996 B.I.A. budget is accepted, we estimate the Bureau's forestry budget will fall from FY 1995's \$50 million to \$36.5 million, a \$13.5 million, or 27%, cut. In addition, should the total Senate reductions for all the B.I.A. be fully adopted, the Bureau will have to dig up substantially more than \$10 million from its already decimated program and administrative budgets to cover the employee separation costs for those released on account of the reductions.

The limited funding provided Indian forestry requires that those funds almost all be spent for basic, on-the-ground forest management activities. Unlike the U.S. Forest Service, the B.I.A. Forestry program does not have a research program or a road building budget. It has no funds identified for environmental planning, and does not have a budget to provide recreational facilities. Ours is a bare bones forestry budget. When it is cut, basic management capacity is lost on tribal forests. Essential information gathering and activity monitoring are cut back. For instance, the B.I.A.'s six person Branch of Forest Resources Planning in Portland, Oregon, will almost certainly be eliminated in the '96 cuts. This office provides forest inventory analysis for the great majority of all tribes and management planning as well for the dozens of smaller forested reservations that do not have such capacity locally or in their Area. Its loss will leave those reservations without vital inventory information or management plans, leaving them, effectively, unmanaged. Clearly, trust oversight will be reduced to crude estimates or guess work, and the federal trust responsibility to protect and develop the corpus of the trust, the land and the trees, will be greatly compromised, placing those assets in jeopardy.

The IFMAT report finds that, up until now, and despite insufficient funding, innovative management approaches have been developed on tribal forestlands that could serve as instructive models of sustainability for others. The report also notes that, without more attention and resources, the flexibility and options upon which this innovation is based will be irretrievably lost. Now, budget cuts along the lines proposed by the U.S. Senate will not only completely foreclose that opportunity, they will drive Indian forests back to such an under-managed level that tribes will be prompted to turn back the forestry programs they have taken over under 638 and Self-Governance. The budget cuts would force the tribes to forsake their local control of their resource, contrary to the avowed philosophy of this Congress. And the skills and expertise gained by tribal employees over the years would be lost.

Meanwhile the Senate recommendation for similar U.S. Forest Service activities is down only 11%. The Senate's B.L.M. forest management budget is down by 8%. That the federal trust management of Indian forests should be required to shoulder such a disproportionate reduction (27%) is unjustifiable to us and has the appearance

that the U.S. Senate Interior Appropriations Subcommittee is doing nothing less than abandoning the trust. The arguments advanced by those who defend the Senate's funding proposal for B.I.A. are specious and disingenuous.

■ The assertion that federal benefits to tribes have some sort of time limit is a direct misrepresentation. Treaties, and the federal and tribal obligations under them, have no time limits, and the U.S. and the tribes were especially clear on that point at the time of the treaty making. Treaties are a contract between the tribes and the U.S. wherein the U.S. promised the permanent well-being of the tribes in exchange for the acquisition and peaceful settlement of tribally ceded lands. On similar grounds, arguments likening federal benefits to tribes to welfare demeans the treaties under which those benefits were secured. Treaty benefits are not welfare, and expenditures to fulfill promises to the first Americans are not discretionary.

■ The claim that a 26% reduction to the overall B.I.A. budget is off-set by a modest increase for the Indian Health Service is akin to telling America's elderly not to complain about Medicare reductions because the U.S. defense budget is being raised, and that, overall, the federal budget that serves them is only being cut a little. The plain facts are that, by virtually any measure, prior to the cuts, Indian programs were not being funded at levels comparable to the general public for either health or general services. Despite this inequity, tribes are still being required to bear a disproportionate share of the responsibility for balancing the federal budget.

■ The claim that funds cannot be provided to the B.I.A. because to do so would require closure or curtailment of National Parks or wildlife refuges is bitterly ironic. It is ironic that the U.S. cannot honor the obligations it entered into with the tribes to obtain those lands because, according to those who defend the Senate budget recommendation, the limited funding is needed to maintain those lands and to operate related facilities for recreation by the general public. It is bitter in that treaty obligations the U.S. would forsake its treaty promises to the Indian people to provide for sport and amusement.

■ The claim that tribes do not tax their members in order to help support the expense of tribal government is misleading. First, some tribes do impose direct taxes on some of their members. For instance, some Washington State tribes tax the catch of their fishermen. Second, individual tribal members contribute to the cost of tribal government to the extent their participation in revenue from tribally owned resources or enterprises is reduced by the tribal government's collection and expenditure of those revenues. Simply because those revenues are not distributed to the membership and then recouped through a tax does not mean that a contribution has not been made. Finally, in light of the substantial federal funds received by state and local governments, it is disingenuous to suggest that they are solely supported by taxing their local citizens, and that therefore, tribes must do the same.

The federal budget doesn't have to be balanced at the expense of the honor of the United States. If the Congress can find seven billion dollars more to spend on Defense than requested by the President, it should be able to find less than 300 million dollars to try to meet its 140 year old commitments to tribes.

Even if the conference restores a substantial portion of the Senate's proposed reductions to the B.I.A., the Indian forestry program is going to be facing serious cuts. As I said earlier, we have little choice other than to try to work with what we will be provided. There is no question this will be a struggle, and there is little likelihood that many of the substantive improvements envisioned by NIFRMA will be realized. It is a shame that vindictive appropriations may stifle the promise of this landmark legislation just as it is poised for implementation.

## CONCLUSION

Chairman McCain, even though there is little or no gas for this otherwise powerful, new NIFRMA engine you put together for the improvement of Indian forestry, the tribes and the I.T.C. will continue to do all we can to properly manage our forests. We will try to make what funding we do receive go further. We will explore ways to get better value from our harvested timber, whether off the stump, in the mill, or through marketing. Through talk amongst ourselves or perhaps through the I.T.C. Symposiums, we can try to distill and share forestry practices that, without increased expense, have been successful on some reservations. And, when the appropriations dust has settled, perhaps the tribes and this Committee can see if any B.I.A. reorganization options still remain that may yield some benefit for the tribes. We will not quit.

Chairman McCain, this new Congress is casting up severe challenges for all of us. We want to express to you our particular thanks for the steadfast efforts you are making on the behalf of the tribes and Alaska Native organizations, and, in fact, on the behalf of the honor of the United States. Right now, we are just ten days away from the vast uncertainties of fiscal year 1996. Other than great pain and wrenching change, we do not yet know exactly what will befall us or how we might deal with it. However, as we work our way through it, should ideas or opportunities arise that might help us contend with this grim new reality, we hope that we might be able to call upon this Committee for its consideration and possible assistance.

Together, Chairman McCain, we have worked hard to elevate the status of our forestry program, the outcome of which goes beyond healthy forests. Our forests are a reflection of the principles and needs of our community.

We can easily document the financial outcomes of our forests but they provide much more. For example, at Nez Perce, according to the latest labor statistics, we have a 64% unemployment rate. On top of this, an estimated 78% of the labor force earns less than \$7,000 per year. This means the other forest resources such as fish,



game and the plants that are traditional foods and medicines, continue to be a mainstay for human subsistence.

Nature remains our caretaker. The natural cycles turning upon the land and waters continue to offer both physical and spiritual sustenance. In honor of nature, through ageless traditions, we celebrate the bounties of each season and we celebrate a wisdom stretching beyond human memory. With this wisdom we search for new science, technology and leadership to guide the care of our land.

No doubt we face challenging times, but we must seek solutions so that our grandchildren will have reason to celebrate during their lifetime.

To conclude, Indian tribes are here to stay. We will not sell our land or shear down our forests during wavering economic times and relocate our operations elsewhere. Our ancestors -- our culture -- is committed to the land upon which we live.

We have become new pathfinders searching for ways to revitalize our environment and thus our communities.

When our work is done, our greatest honor is not in what we celebrate in ourselves today. The greatest honor lingers in the future when our grandchildren will stop to say, "Our elders, our grandmothers and grandfathers, did do it right." They will enjoy the success of our lifetime in their future.

Thank you.



## Quinault Indian Nation

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### Testimony of Gary S. Morishima Quinault Nation

#### Senate Indian Affairs Committee Oversight Hearing National Indian Forest Resources Management Act September 20, 1995

I am pleased to appear before the Committee today to express my views concerning the status of the Indian forestry program following enactment of the National Indian Forest Resources Management Act (NIFRMA)<sup>1/</sup>

My name is Gary S. Morishima. I hold a Doctor of Philosophy degree in Quantitative Science and Environmental Management from the University of Washington. I have both studied and been directly involved with Indian forestry issues since the late 1960's. Currently, I am a member of the Interagency Advisory Committee established by the Department of Agriculture to help facilitate intergovernmental coordination in implementing the Northwest Forest Plan. Since 1974, I have served as Technical Advisor in natural resource management to the Quinault Indian Nation. As part of my responsibilities, I worked as the forest manager for the Quinault Nation for a number of years and have served as a member of the Executive Board of the Intertribal Timber Council (ITC) since its inception.

The ITC has been involved throughout the development and implementation of NIFRMA. We offered comments and suggestions during hearings convened by this Committee and helped coordinate and facilitate tribal input as the legislation began to take form. My testimony today concentrates in three major areas of ITC's involvement in implementing NIFRMA: (1) the process employed to develop implementing regulations; (2) ITC's experience with the Indian Forest Management Assessment Team (IFMAT); and (3) the status of tribal efforts to consider and implement appropriate recommendations from IFMAT.

#### Development of Implementing Regulations:

Regulations to implement NIFRMA were developed through a collaborative process between the BIA and affected tribal governments. Shortly after NIFRMA

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<sup>1/</sup> Title III, P.L. 101-630.

Testimony of Gary S. Morishima  
Quinault Nation  
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was enacted, the BIA and ITC worked together to establish a structure and process for development of regulations. The structure consisted of four subject-matter workgroups, a Project Coordinator and Administrative Records Manager, and a Steering Committee. Workgroups, comprised of both BIA and tribal representatives, concentrated on: (1) Education; (2) Alaska Technical Assistance; (3) Management and Operations; and (4) General Regulations. The BIA provided a project coordinator and maintained administrative records as development of regulations proceeded. The Steering Committee consisted of three tribal and three BIA representatives to guide development of regulations and provide direction in the event that workgroups were unable to reach agreement on treatment of specific topics. Marshall Cutsforth, then BIA Chief Forester, served as chair of the Steering Committee when the project began; I served as chair at the conclusion of the regulation development process.

The process involved two sets of public hearings and several meetings of the workgroups and Steering Committee. Public hearings were convened in the midwest, the Pacific Northwest, the southwest, and Alaska. Comments and suggestions were carefully considered and modifications made as deemed necessary and appropriate. Enactment of NIFRMA provided the opportunity to correct long-standing problems and streamline processes in the administration of Indian forest resources. Key elements of regulatory revisions include: (1) resolution of the issues surrounding forest management deductions; (2) the establishment of forest land assistance programs; (3) the authority to directly deposit proceeds from the sale of forest products into tribal accounts; (4) recognition of tribal laws and objectives; and (5) enforcement of trespass violations.

Actual implementation of several of these improvements, however, must await publication and adoption of the forestry regulations. Although the substantive work on the forestry regulations has been completed for some time, numerous administrative hurdles have delayed implementation. The regulations developed through this process were substantively completed more than 18 months ago and were finally submitted for administrative approval last fall, but are still awaiting final publication due to the Interior Department's Office of Regulatory Affairs' desire to "translate" the regulations into "plain English." Late last week, I received a draft of these translated regulations. While the effort may be well-intended, the proposed changes are quite substantive and would have numerous unanticipated and undesirable repercussions; these problems with the revised regulations cannot be readily fixed overnight and no attempt should be made to do so.

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Mr. Chairman, these continued administrative machinations in publishing and implementing forestry regulations have become ludicrous; sorely needed changes to implement the provisions of NIFRMA and correct long-standing problems are being senselessly delayed. In my view, the very idea behind trying to translate the forestry regulations into "plain English" just doesn't make sense. The forestry regulations concern technical and highly specialized subject matter that is unlikely to be suitable for translation into "plain English." More fundamentally, just who is the translation intended to benefit? The timber tribe and the BIA are the ones most affected by the forestry regulations. There is no need to translate the regulations into plain English for their benefit because the BIA and timber tribes developed the regulations in the first place.

I request the Committee's assistance in convincing the Administration to publish and implement the regulations as they were completed prior to the recent effort to convert them to "plain English." These are the regulations that were developed in cooperation with tribal governments as required by NIFRMA. These are the regulations that should be implemented as the final rule. To do otherwise would make a mockery of the dedication and commitment of the BIA and affected timber tribes in working together in partnership throughout the process of developing regulations for implementation of NIFRMA. If the Administration deems conversion of these regulations to "plain English" to be desirable as some sort of pilot project, then a careful, thorough process involving affected tribal governments should be implemented at a later date to accomplish that end within a reasonable time frame.



**Questions Posed to Gary S. Morishima  
Following the September 20, 1995 Forestry Oversight Hearing  
Before the Senate Indian Affairs Committee**

1. *How does the lack of regulation affect Indian forestry programs and what are the impacts on illegal timber cutting in Indian country? Do you have any current estimates on the losses to Indian tribes in board feet and in millions of dollars due to illegal trespass? As I understand it remains a significant problem in Indian country.*

Enforcement of trespass violations on Indian forestry lands has been hampered by delays in issuing implementing regulations for the National Indian Forest Resources Management Act (NIFRMA). Problems have been due to both the unavailability of sufficient funds to detect trespass activity and to successfully prosecute and collect judgements involving suspected offenders. Regulations providing for full faith and credit of judgements in tribal courts in state and federal courts should alleviate difficulties with collection of trespass judgements, but problems of detection and trespass would continue until necessary funding becomes available to enable these activities to be effectively pursued.

The failure to adequately protect Indian forest lands from trespass activity has two major impacts: (1) direct loss of current income to trust beneficiaries; and (2) reduction of future value due to loss of growth or damage to forest resources or the productivity of the land.

I do not have current statistics on the volume and dollar value of timber involved in trespass activities. This information is difficult to obtain because there is no comprehensive reporting system that identifies the volume of timber involved or suspected to be involved in trespass activities. The latest statistics I have available are from approximately five years ago when the annual loss reported in successfully prosecuted trespass cases amounted to just over a million board feet of timber worth slightly more than \$300,000. I suspect that this volume and value is likely to be only a small fraction of that involved in trespass activity. I would also like to note that trespass activity on Indian forest lands involves more than timber; a wide variety of other forest products, including brush, seeds, nuts, mushrooms, Christmas trees, bear grass, and firewood are also susceptible to trespass.

2. *Could you provide an estimate of the timeframe that will be required to eliminate the backlog of Indian forest development needs?*

The failure to eliminate forest development backlogs will result in substantial future economic losses to Indian beneficiaries of the trust. Clarification of the meaning of the term "backlog" is necessary to respond to this question, since the definition has changed over time. In the late 1970's, "forest development backlog" was commonly used to refer to an estimate of approximately 1 million acres of Indian forests which were believed to require silvicultural treatment to correct deficiencies that inhibited growth and yield. As a result of reporting problems noted by a GAO study in the late 1980's, the BIA revised

the definition of forest development backlog to include all reforestation and timber stand improvement activities necessary to properly manage Indian forests so as to grow desired products according to a desired schedule. Upon completion of a new inventory in the early 1990's, approximately 1.7 million acres were identified that required treatment. Approximately 400,000 acres of forest land have been treated.

The timeframe required to eliminate this backlog of Indian forest development needs will depend upon the level of funding available for this purpose and the success of treatment efforts. The latest nation-wide statistics I have available indicate that about 300,000 acres of forest land require reforestation and 1,000,000 acres require timber stand improvement (primarily reducing overstocking to improve growth of desirable species while decreasing potentials for losses due to fire, insects, and disease). Per acre treatment costs for much of the remaining backlog are likely to be high compared to those incurred for the 400,000 acres of backlog already treated because of the difficulty of access and problems in effective treatments (e.g., sites susceptible to plantation failures). If forest development funding is maintained at current levels (adjusted for inflationary costs) approximately 25 years would be required to eliminate the current backlog, assuming that efforts are continued to prevent additional backlogs from accruing (e.g., enforcement of reforestation and slash abatement provisions in timber sales contracts).

Progress on eliminating the backlog may be difficult to monitor in the future. A probable outcome of reduced budgets for Central and Area Office forestry functions will be the loss of capability to collect and report backlog needs and accomplishments on a timely and consistent, nation-wide basis. It should be noted that, given the definition of forest development backlog, however, the "backlog" will be difficult to eliminate completely. The forest resource does not remain static. While the acreage currently identified as requiring silvicultural treatment may be eliminated, other needs will emerge as conditions change over time. For instance, as forest stands grow, they may require thinning to reduce stocking to desirable levels; as plantation efforts fail, reforestation needs will be identified; other treatments may be required to correct problems caused by wildfire, disease, or insect infestation. Progress on eliminating forest development backlogs can only be assured if the rate of accrual is less than the rate of treatment.

3. *You mentioned your involvement with the Interagency Advisory Committee. Have you offered recommendations to this Committee to improve coordination with the BIA and tribes to improve integrated resource management planning for forest and agricultural resources and if so, what type of response have you received?*

I have made several such recommendations as part of my responsibilities as a participant in the Interagency Advisory Committee (IAC) established to help improve intergovernmental cooperation in implementation of the Northwest Forest Plan (NWFP). Primary recommendations have included: (a) the need for general coordination and consultation with affected tribes on a government-to-government basis, particularly with respect to the standards contained in the Record of Decision for the NWFP whenever restrictions of Indian rights are being considered for purposes of conservation: (b)

watershed analysis; (c) wildlife management; and (d) monitoring. Some progress has been made in coordinating watershed analysis procedures on federal and non-federal lands, but efforts to implement coordinated, cooperative management on a landscape basis have thus far been disappointing.

An important aspect of improving coordination among resource managers through participating in the IAC is the opportunity to share "how to" information. The IAC intends to visit the Yakama Reservation next spring to learn how ecosystem management concepts are being implemented in Indian country. In addition, the Yakama meeting will address a special agenda topic designed to improve government-to-government relations and consultation between agencies in the Federal Administration, Indian tribes, and other governments.

Federal, state, and county participants in the implementation process have generally been understanding and supportive of the need for meaningful tribal involvement. However, full tribal and BIA participation has been severely hindered by the failure to provide necessary funding support. Although implementation of the NWFP has been given a high priority by the Administration, Congressional appropriations processes have not reflected this priority. No funding to support the BIA and tribal involvement in the IAC process has been appropriated in stark contrast to the funding provided for the participation by other agencies. The severity of reductions in funding for tribal programs reflected in the Interior Appropriations Bill reported out of conference would cripple the capability of tribes to provide fundamental services to their members. Unless additional funding is forthcoming, support for continued tribal participation in implementation of the NWFP would be unlikely.

4. *In light of the proposed budget cuts at the Central and Area Offices of the BIA and the potential loss of capacity in those offices, what potential recommendations can you offer to address the critical loss of compiling forest inventory data?*

If budget reductions of the magnitude currently included in the Conference Interior budget are implemented, the capacity to plan, monitor, and evaluate Indian forest management activities will be severely diminished. Some opportunities exist to improve efficiencies in inventory systems by restructuring and redirecting field and analysis activities, but generalities as to the degree to which such efforts can help offset lost capabilities resulting from reductions in funding are difficult to make since impacts must be evaluated on a case-by-case basis. At a few locations where strong agency or tribal programs exist, it may be possible to largely assume planning and analysis activities if efforts to increase the accessibility of computer data processing capabilities are undertaken. However, for other locations such "in house" management capabilities will be lost. Options include purchasing expertise from outside consultant services or doing without this important information. In either case, the capacity for consistent, nationwide reporting of status, accomplishments, and needs will likely be lost.



*Executive Office of the Chairman*  
**WHITE MOUNTAIN APACHE TRIBE**

RONNIE LUPE  
 CHAIRMAN

**Testimony of Ronnie Lupe, Chairman of the White Mountain Apache Tribe**

**Before the Senate Indian Affairs Committee**

**September, 1995**

Mr. Chairman, Members of the Committee:

I am Ronnie Lupe, Chairman of the White Mountain Apache Tribe, located in the east central mountains of Arizona. My people send you greetings and thank you for inviting us to speak with you today.

**DESCRIPTION OF OUR LAND**

Our Fort Apache Indian Reservation is the remnant of our once vast aboriginal homeland. It is comprised of over 1.6 million acres of land ranging from desert to our 11,500 foot sacred mountain. We are blessed with abundant water, lakes, streams, and a variety of plentiful game such as elk, deer, wild turkey, and a host of other species which make their home on our land.

This land which we have lived upon from time immemorial, contains a portion of the world's largest stand of ponderosa pine. On our reservation alone we have over 800,000 acres of commercial timber, which supports two sawmills on our reservation with a present annual allowable cut of approximately 55 million board feet. Almost 700 people derive their livelihood from the management, harvesting and production of timber products.



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**BIA TRUST SERVICES**

The Bureau of Indian Affairs [BIA], Fort Apache Agency, through the Branch of Forestry, provides essential trust services to my tribe. These services include protection and management of our forests from wildfires, insects and disease. In addition, the Bureau manages the forest for multiple uses such as timber, grazing, wildlife, recreation, water resources and cultural values. Through strong tribal leadership and management, our forests have provided millions of dollars of income to tribal members and non-members on and around our reservation. Our multiple use forest management practices have allowed my tribe to significantly reduce welfare rolls and help our people raise themselves from a dismal economic position. This was not always the case.

**BIA'S HISTORICAL FAILURE TO FULFILL ITS TRUST OBLIGATIONS**

For years, the Bureau of Indian Affairs has fallen short of its trust responsibilities to our forests, grazing lands and water resources. In years past, our forests were drastically overcut, not for our benefit, but for the benefit of non-Indian sawmills which operated on our reservation for almost 75 years. Under BIA management, the heart was cut out of our forests. Our beautiful grazing lands, which had a carrying capacity in their pristine state of 40,000 cattle, had upwards of 100,000 non-Indian cattle, horses and sheep at one time until we were able to stop the abusive leasing practice in the early 1950's. Our water resources have not been developed, and we have met with stiff resistance from the Department of Interior in the development of our water resources for agricultural development. We have over 450 miles of streams on our reservation, yet our villages and communities are often without drinking water in the summer.

We have been successful before the U.S. Claims Court in proving that the Bureau of Indian Affairs breached its trust responsibilities in its mismanagement of our forests and grazing

lands. Yet, the pennies awarded us do little to compensate us for upwards of \$500 million dollars in damages to our forests, grazing lands and riparian areas.

#### **OVERCUTTING MANDATED BY THE BIA TO INCREASE WATER RUNOFF**

During the 1960's and 1970's, the Bureau's Forestry Department assured us that we could cut over one hundred million board feet per year, and that our forests could sustain such a cut forever. We were forced to expand our sawmill at a cost of \$36 million dollars to accommodate this annual cut under the Bureau's threat that surplus timber that we did not log would be sold to non-Indians outside our reservation. Believing that our forest was being overcut, we spent hundreds of thousands of dollars to employ our own experts to prove that our forests were not being managed in accordance with best management practices and in our economic interest. We determined that the annual allowable cut had to be reduced to 55 million board feet to insure sustained yield and to preserve our forests for generations to come. The Bureau's Forestry Department eventually agreed with our figures. These misrepresentations cost us dearly. We eventually learned of the plan hatched in the 1950's and 1960's to increase water runoff to Phoenix by overcutting our forests.

#### **TRIBAL GOALS OF ECOSYSTEM MANAGEMENT**

We now manage our forest on an ecosystem basis and not on a timber sale by timber sale basis. We have established a Statement of Relationship with the U.S. Fish and Wildlife Service that recognizes the tribe as the primary manager of our lands. We demonstrated our management capacity with the development of our Mexican Spotted Owl management plan that provides more protection for the owl than any designation of critical habitat could possibly accomplish. We have turned down several timber sales presented to us by the Bureau of Indian Affairs that we

felt would damage the ecosystem. We have insisted on an uneven age selective cut of high risk trees, and have firmly opposed proposals to clear cut our forests or log our steep canyons. We have prohibited out of control, so-called prescribed burning, which scorched the ground and killed young trees and sacred plants and herbs used by our people. Year by year we have taken over more control and management of our forestry program from the Bureau of Indian Affairs. I can say now that we are the primary managers of our forests, but it is a constant struggle and we must remain ever vigilant to protect our remaining resource.

### THE PROMISE OF NIFRMA

The National Indian Forest Resources Management Act [NIFRMA], enacted November 28, 1990, provided us with great hope for a better future. Congress in wonderful language declared that our forest lands were among our most valuable resources, that they were a perpetually renewable and manageable resource which provided economic benefits, as well as natural benefits including ecological, cultural and aesthetic values. Congress recognized the United States trust responsibility toward our forest lands and acknowledged that existing federal laws did not sufficiently assure adequate and necessary trust management of those lands. Congress also recognized that federal investment and management of Indian forest lands was significantly below the level of funding for lands of the National Forest Service, Bureau of Land Management, or private forest land. In one of its most important findings, Congress recognized that tribal governments can make substantial contributions to the overall management of Indian forest land. We could not agree more with these findings.

### THE PURPOSES OF THE ACT

The purposes of the Act were equally impressive and include a reaffirmation of the Secretary's trust responsibility, a strong statement regarding tribal participation as beneficial owners, clarification of the Secretary's authority to make deductions from the sale of Indian forest products, increasing the number of professional Indian foresters and related staff, and provision for necessary appropriations to carry out the Act for the protection, conservation, utilization, management and enhancement of Indian forest lands.

### DELAYED IMPLEMENTATION - CONGRESS'S INTENT FRUSTRATED

Unfortunately, despite Congress's intent, the Act has not been implemented by the Department of the Interior in a manner which meets the high standards required of a trustee. Specifically, the Secretary was directed in the Act to adopt implementing regulations within eighteen months of the Act's enactment. It is almost five years later, and yet we still do not have any published regulations, despite efforts by the Tribe, Bureau of Indian Affairs and Department of Interior solicitors who have completed the substantive work on those regulations some time ago. I am advised that the Department of Interior's Office of Regulatory Affairs now wishes to convert the all but final regulations into "plain english". That office never contacted my tribe and never shared its "plain english" plan with any other tribe that I am aware of, thereby violating one of the requirements of the Act. The old regulations were understandable to me and seem to be in "plain english", even though english is not my first language. Such unreasonable delays and bureaucratic fumbling defeats the intent of Congress and should not be tolerated by this body.

Another issue is Section 314 of the Act which establishes educational assistance. Under the cooperative education provision, BIA Forestry at our agency level, requested \$5,000, for three



years, but only received \$3,300.00 for two years. Two of our tribal members received this aid. Only one tribal member received funding from the intern program. He successfully graduated from Northern Arizona University with a Forestry Degree, but funding has now disappeared. The national trend and on our reservation is towards an ecosystem based management approach, requiring professionals from many diverse fields to come together to formulate a forest management plan. We have done this on my reservation. That is why the U.S. Fish and Wildlife Service recognized our Mexican Spotted Owl conservation plan and why our mills remain open while others which rely on National Forest timber are closed. The Act defines forest land management activities to include traditional forest inventory management plans and activities, but also requires that such plans be consistent with and reflective of tribal integrated resource management plans. Yet, funding under the Act has fallen far short of meeting the educational assistance needs of my people to prepare them to implement an integrated resource management plan. We have been forced to fund that aspect ourselves at great expense and cost to our social programs, such as law enforcement, education and tribal courts.

#### **CURRENT PROPOSED CUTBACKS WILL FURTHER FRUSTRATE**

##### **THE GOALS OF THE ACT**

Inadequate levels of funding are recognized in the Act and in the IFMAT Report as a major impediment to satisfactory management of our forest resources. Yet, we now bear sad witness to the current attempt by Congress to drastically reduce funding levels to tribes, thereby ignoring the government's trust responsibility and Congress's moral responsibility to Indian people. Proposed cutbacks will reduce our forestry budget from the 1995 fiscal year level of \$2,104,793 to \$1,450,900., or a reduction of \$653,893.00. At this reduced level, BIA forestry

services, which were bare bones to begin with, cannot adequately be provided to my tribe. BIA Forestry will be unable to prepare enough timber sales to meet the needs of our two tribal sawmills. These proposed cutbacks, together with the unfunded mandates that our lands are subject to, but which do not apply to private lands, will render the Indian Forest Resources Management Act ineffective. Presently, there is a backlog of over 84,000 acres of our forests that must be thinned. BIA only has funds to thin 2,000 acres per year. This year it will only thin 1,000 acres. Ten thousand (10,000) acres a year must be thinned, otherwise sufficient sawlog growth will not occur and we will not have trees to harvest. Over 2,300 acres are backlogged for reforestation. During the past fiscal year, BIA's thinning funds for our reservation were reduced from \$1.1 million to \$629,000. This spells disaster for the future of our sawlogs and is a breach of the federal government's trust responsibility. The financial loss will be massive. Additionally, 26 FTE-BIA Forestry positions from a FTE-BIA Forestry staff of 75 persons will be affected by the current proposed cutbacks. This will result in a serious reduction in forest management services, particularly in the preparation of timber sales.

#### THE POSITIVE SIDE

On the positive side, the Act has facilitated the direct deposit of proceeds from the sale of our forest products into tribal accounts. It has created an atmosphere where BIA forestry personnel are more willing to readily recognize our tribal laws and objectives. However, actual implementation of these improvements and enforcement of them must await publication and adoption of the long delayed forestry regulations.

Another positive accomplishment of the Act has been the achievements of the Indian Forest Management Assessment Team [IFMAT]. IFMAT came to my reservation and completed

its independent review of the status of our forests. It produced a summary of its observations and delivered recommendations to Tribes. We agree with IFMAT's major recommendation that tribal governments should have the primary responsibility for directing forest management actions. We have done so by aggressively and actively participating and imposing our tribal oriented integrated resource management philosophy on the BIA ten year Forest Management Plan. However, to be successful, the United States Government must provide financial support, technical assistance and trust oversight as recommended by IFMAT. This will require that our relationship with the BIA be restructured so that tribal governmental objectives for forest management are paramount, and that BIA provide technical assistance in a supportive role only. Although a number of our tribal members have graduated from college with degrees in forestry, financial assistance is necessary to finance the education of tribal members in disciplines related to forest management such as hydrology, soil science, agriculture, range management, engineering, biology, botany, and watershed management and restoration.

**FUNDING FOR INDIAN FORESTS IS FAR LESS THAN  
THAT FOR THE NATIONAL FOREST**

The IFMAT report disclosed that the federal government's trust obligation to manage Indian forest resources has been inadequate and receives less funding for comparative activities in the U.S. Forest Service or Bureau of Land Management. These inadequacies and gross disparities have not been narrowed and in fact, have steadily increased because of the unfunded mandates required by the United States Government. For example, the National Forest receives a separate road fund in addition to road fees from stumpage. Our tribe must pay 100% of road costs from our own lumber sales. We have 4,200 miles of substandard roads on my reservation.

IFMAT found their condition deplorable. BIA does not pay for these roads, the tribe does. To summarize, current funding for Indian Forestry is 63% of that for timber production for the National Forest, only 50% of that for timber production for private industry in the Pacific Northwest and only 35% of that for coordinated resource management for the National Forests. (Source--IFMAT Executive Summary--November, 1993, p. ES-5).

### UNFUNDED MANDATES

Although our aboriginal lands are private lands, the federal government has a long standing trust obligation to protect our land and resources. This trust relationship and obligation does not mean that our land should be subject to unrelenting federal regulation. A recent example is the Endangered Species Act, which required us to expend thousands of dollars to prove that the Arizona Willow was not endangered, but in fact existed in Utah in thousands of numbers.

These unfunded mandates have been documented by the BIA's Office of Trust Responsibilities in its 1994 Unfunded Environmental Mandate Study, dated April 24, 1995. In the face of all this evidence, the Senate has currently proposed a 27% cut of the BIA budget which includes forest management. This compares with the Senate's funding reduction recommendation for U.S. Forest Service activities of only 11% and the BLM Forest Management Budget of 8%. Our forests are already undermanaged and underfunded. We encourage our tribal members to go to college and obtain forestry degrees with the ultimate goal of taking over all of the BIA's forestry management responsibilities pursuant to a 638 self determination contract. But, if we take over the BIA Forestry program at their presently proposed, drastically



underfunded level, we would be doomed to fail. Our Tribe and other Indian people will be criticized as being unfit to manage our own tribal lands. We have experienced a long and sorry history of underfunding from the U.S. Government when we take over BIA trust duties pursuant to the 638 Self-determination Act. For example, the Bureau provides only 40% of the funding needs for our law enforcement program forcing us to draw upon scarce tribal funds to the tune of over one million dollars to keep it operating. Even then, our law enforcement officers are the lowest paid in the state.

### **CLOSING - SUPPORT FOR THE ACT**

In closing, the White Mountain Apache Tribe supports the National Indian Forest Resources Management Act as the Act reflects tribal thinking and participation at all levels. It has enjoyed some limited success with the IFMAT Report and clarification of direct payment of forest products receipts to tribes. Full implementation of this very valuable Act is being obstructed and delayed by irresponsible interference from bureaucrats within the Department of the Interior. But most importantly, for us to be truly successful and able to implement Congress' findings and purposes, adequate funding for BIA-tribal forestry programs must continue at the full 1995 fiscal level. Only then can we be in the position to take over full management from the BIA of our forests and receive the benefits of the Act. We lived for centuries in harmony with our life giving forests. Our lands and my people have suffered over a hundred years of abuse. Give us the financial means to correct past Federal Government management abuses and direct implementation of the long awaited regulations without further delay. If this is done, our forests will again have the opportunity to flourish under our stewardship.



*Executive Office of the Chairman*  
**WHITE MOUNTAIN APACHE TRIBE**

RONNIE LUPE  
 CHAIRMAN

October 20, 1995

Senator John McCain  
 U.S. Senate Committee on Indian Affairs  
 Washington, D.C. 20510-6450

RE: National Indian Forest Resources Management Act

Dear Senator McCain:

This letter responds to the supplemental questions for the hearing record on implementation of the National Indian Forest Resources Management Act raised in your letter of September 25, 1995.

**(1) Passage of the National Indian Forest Resources Management Act**

Because regulations to implement the National Indian Forest Resources Management Act were not promulgated until October 5, 1995, the Act has had little direct impact on the Tribe's efforts to implement multiple use management practices. However, it should be understood that the White Mountain Apache Tribe owns and operates several recreation enterprises including Sunrise Ski Park and has been employing multiple use concepts and management practices for a long time.

Indirectly, passage of the Act and anticipation of the implementing regulations has generated discussion regarding the enhancement of multiple use management practices with particular emphasis on the role and development of integrated resource management planning on our current practices. Additionally, the passage of the Act has significantly increased the sensitivity of the Bureau of Indian Affairs Forestry personnel for working cooperatively with the Tribe in resolving multiple use management issues.

**(2) Court Case Regarding Breach of Federal Government's Trust Obligations to the Tribe.**

The Tribe's breach of fiduciary duty claims against the BIA, principal agent of the Trustee United States, was filed in 1951 before the Indian Claims Commission.



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After the Indian Claims Commission was dissolved, the Federal Claims Court continued with the case. The court's opinion issued in 1987 may be found at 11 Cl.Ct. 614 (1987). Under the Indian Claims Commission Act, a tribe can only make a claim against the United States Government for breach of fiduciary duty occurring on or before August 13, 1946. A Tribe can pursue claims after that time period if it can show that the wrongs began prior to 1946 and continued thereafter. The White Mountain Apache Tribe was unable to prove a continuing, uninterrupted wrong, and therefore, was restricted in its claim of damages for overcutting its forests and for rangeland mismanagement in the amount of \$5,424,429.

The Tribe alleged in the case that sections of its forests harvested for timber since 1918 were overcut, resulting in a loss of growth in the trees during the years since the cuts and for future years. The court, on page 668 of its Opinion, traced the statutory and regulatory obligation of the U.S. Government to manage Indian timber resources that began with a 1910 Act authorizing the Secretary of the Interior to sell timber on Indian lands and to apply the proceeds for the benefit of Indians. Beginning in 1934, Congress imposed even stricter duties upon the government with respect to Indian timber management, expressly directing that the Interior Department manage Indian forest resources "on the principle of sustained yield management." The purpose of the provision was to "assure a proper and permanent management of the Indian forest" under modern sustained-yield methods so as to "assure that the Indian forests will be permanently productive and will yield continuous revenues to the tribes." 78 Cong.Rec. 11730 (1934), (Representative Howard, co-sponsor of the Act and Chairman of the House Committee on Indian Affairs).

The Claims Court found that sustained-yield management was not merely an objective but an absolute requirement in all timber sales or cuts after 1934. Citing United States Supreme Court precedent, the Claims Court concluded that the aggregate effect of such detailed and comprehensive government regulation was to "give the federal government full responsibility to manage Indian resources and land for the benefit of the Indians" and that they "thereby establish a fiduciary relationship and define the contours of the United States' fiduciary responsibilities." Claims Court Opinion at 669. After hearing expert testimony and examining the documents, the court concluded that instances of clearcutting and excessive harvesting on our Reservation constituted a breach of the Trustee United States' fiduciary duty, especially when measured against the specific directives of the applicable regulations for Indian tribes. Opinion at 672.

Unfortunately, other pre-1946 sales were insufficiently proven to allow us to recover for damages, even though, in our hearts we know our forests were drastically

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overcut. Therefore, the court found that the government was only liable for overcutting one of the northeast timber units prior to 1946.

The overcutting of our forests in previous years, prior to 1946 and thereafter, has, in part, caused the Tribe to reduce its allowable cut. Previous clearcutting or overcutting has resulted in thickets of small pine trees which have little or no economic value and has caused the Tribe to incur additional costs to thin those trees to release the remaining trees' growth for future commercial logging.

We appealed the judgment, but the Federal Claims Court affirmed the lower court's opinion. Other aspects of the case dealing with accounting of tribal monies was settled at a later date and we are now in the final days of accepting a final judgment with interest for all mismanagement and accounting claims that existed prior to August 13, 1946, the effective cut-off date under the Indian Claims Commission Act. The case is effectively terminated as of this date, except for judgment and distribution.

### **(3) Tribal MSO Plan.**

#### **Effectiveness of the Plan**

The combined implementation of both the White Mountain Apache Tribe Mexican Spotted Owl Management Plan ("Plan") and the "Statement of Relationship" proved to be very significant "policy" breakthroughs to opening up the way for the Tribe to retain control of the management and fate of its aboriginal forest resources and ecosystems. From a resource management standpoint, the Plan and Statement of Relationship have proven to be extremely effective and productive as they now allow the Tribe (and BIA) to focus collective efforts and human/money resources on managing the Tribe's ecosystems, instead of tending to bureaucratic/political/legal conflicts with the USFWS and others. Needless to say, the Tribe's day-to-day working relationship with the USFWS has gained substantial ground in the sense that the respective resource managers of each are now able to communicate and *move forward* along a common path of understanding and effort.

#### **Federal Government Involvement**

We coordinated with the USFWS (Steve Spangle, Albuquerque Region) and members of the Mexican Spotted Owl Recovery Team for this region in developing the

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MSO management applications of the Plan. The Recovery Team was very receptive to our desire to move toward "Ecosystem" management and was helpful in providing insight into and technical assistance on the critical habitat management elements of the Plan.

Like any Plan, the Tribe's MSO Management Plan is a working tool which will continue to evolve as we learn more about its impact on the MSO and Tribe's forest ecosystems. The MSO Plan provides for interagency, interdisciplinary input into the further development of the Tribe's management practices; but, the important component is that the Tribe (not the USFWS or other federal agency) is controlling the direction and application of these management practices.

#### **(4) Impact of unfunded federal mandates and proposed solutions**

##### **Statement of the problem**

The impact of unfunded Federal mandates, particularly NEPA and the Endangered Species Act, on tribes in general and on the White Mountain Apache Tribe specifically, has been tremendous. The impact occurs in two ways: (1) through mandates imposed on the Bureau of Indian Affairs (BIA) and the other primary federal trust agents such as the Indian Health Service, and (2) through direct costs to tribes.

A 1994 BIA study concluded that an average national funding deficit of approximately 46 million dollars (1993 dollars) existed to minimally comply with statutory environmental mandates imposed on Indian lands and resources, \$10 million of which was necessary for compliance with NEPA alone. To comply with these mandates, the BIA has diverted scarce resources from other sorely-needed programs.

The White Mountain Apache Tribe has incurred tremendous costs over the past few years due to the Endangered Species Act (ESA) alone. As I have previously stated to the Committee, it is our view that the ESA does not apply to tribes. Nevertheless, the U.S. Fish and Wildlife Service (the "Service") has aggressively pursued imposing federal regulations under the ESA on our Reservation and on Indian lands throughout the country and has attempted to impose management standards for our resources through the Section 7 consultation process.

Regardless of the legality of these actions, they have resulted in tremendous resource drains on this tribe and our trust agents. Prior to entering into the Statement



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of Relationship with the Service, many on-the-ground conservation and management efforts on our Reservation had been curtailed because both our resource dollars and our human resources were diverted to responding to these regulatory measures. Attachment 1 lists specific examples that highlight the magnitude of the problem. The combined effect was to redirect our resource management efforts from on-the-ground activities to the paperwork involved in responding to bureaucratic imperatives. Our Game and Fish Department had to direct money from other wildlife management programs to create an endangered species program and hire a full-time senior-level endangered species coordinator. Some of the diverted moneys previously had gone to revenue-generating activities. It had been used to manage habitats; suddenly it had to be used to focus on particular species, often to the neglect of other species and to habitat management.

Because of the continuing barrage of proposed regulations which threatened our sovereign rights to manage our homelands, we set aside over \$250,000 of our forest administration monies just to deal with legal issues related primarily to the ESA. Much of the money was slated for attorneys, technical consultants, research assistants, and economic studies related to responding to proposed regulations and potential litigation. Fortunately, since the Statement of Relationship was entered into last year, our need to tap into this money has diminished dramatically. As a result, we used some of the surplus last year to hire one of our own tribal members as a natural resource specialist. This is where our scarce resource dollars should go, not to fighting off attacks on our rights of self-management and self-determination.

What sometimes gets overlooked in discussions about application of NEPA and the ESA on Indian lands is that tribes and their trust agents bear a disproportionate share of the burdens of these mandates and few, if any, of the benefits. The Fort Apache Indian Reservation, like other Indian lands, was set aside in trust as a homeland for Indian people specifically so that we could become self-sufficient and pursue our rights of self-determination without undue interference. The trust responsibility of the United States to protect and preserve our trust assets, coupled with the long-standing Congressional policy of promoting Indian self-determination, self-sufficiency, and self-governance, creates a situation where, on our reservation and others, the federal government is intimately involved with tribal programs and activities much more so than with similar activities on private or state lands. The irony is that NEPA and Section 7 of the ESA, and the resource demands associated with them, are triggered on our lands precisely because of the trust obligation, which was intended to enhance, rather than impede, self-sufficiency.

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Congress has chosen to impose obligations on the federal government through NEPA and Section 7 of the ESA that it has not imposed on states. These obligations de facto have been imposed on this tribe and others, through our trust agents in carrying out their trust obligations to us, without the necessary funding to carry out these obligations. We believe this additional layer of federal review of tribal programs is unnecessary. The trust obligation itself should ensure that Indian resources are conserved. Moreover, to the extent the trust agents' activities should be reviewed, that review should be by the Tribe, not by another federal agency.

Another problem that gets little attention is that the way the ESA has been applied exposes tribes, through lawsuits against the trust agents, to third-party lawsuits by environmentalists and others. An example is the recent citizen suit against the U.S. Forest Service and the BIA that resulted in an injunction halting logging on Navajo and Forest Service lands in the Southwest. About 350 tribal members apparently were affected by the shutdown of operations.

### **Proposed solutions**

Based on our experience over the past year working with the U.S. Fish and Wildlife Service under the Statement of Relationship, we believe that the only workable solutions must be those that are based on a government-to-government way of dealing. Explicitly making the ESA applicable to tribes or otherwise layering more federal regulation on tribes is not the answer. The Statement of Relationship works because it is based on mutual respect and a growing sense of trust. Most importantly it works because it respects the White Mountain Apache Tribe's sovereignty and aboriginal rights of self-management. In addition, it is tailored to the specific circumstances of the Fort Apache Indian Reservation. We develop and carry out our conservation programs in a manner that makes sense for our own lands our particular needs. The local office of the Service is assisting our own efforts by providing funds and technical assistance; in this way, local Service personnel are helping to meet the Service's own trust responsibility to the Tribe. The result has been to free up much creative energy from within both the Tribe and the Service, and many innovative projects are currently in the planning stage or already underway on our Reservation.

Our Statement of Relationship is the type of solution to these problems called for by the Unfunded Mandates Reform Act. The purpose of that act is to end the imposition, without full consideration by Congress, of unfunded mandates on tribal and other governments that displace other essential priorities. The law requires full participation of the potentially affected government and selection of the most cost-effective or least

Senator John McCain  
October 20, 1995  
Page 7

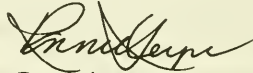
burdensome alternative that achieves the regulatory objectives. The Statement of Relationship provides a mechanism for meeting the objectives of the ESA without the imposition of regulations. It fosters innovation and serves the Congressional goals of Indian self-sufficiency and self-determination.

Some obstacles to progress remain. Some are related to scarcity of funding. But many are due to the continued mandates falling on our trust agents due to NEPA and Section 7 of the ESA. We believe that no one has carefully looked at the applicability of these mandates when the action being carried out is a necessary trust obligation. We question whether Congress intended that our tribal lands carry such a disproportionate burden of these mandates. One solution would be a clarification or statement that the actions of federal agencies in carrying out their trust obligations to tribes do not constitute "federal actions" for purposes of the ESA or NEPA. This would remove the unfunded mandates that fall disproportionately on tribal lands.

Another approach that would relieve some of the ESA burden, would be to require Department of Interior agencies to fully implement and to build upon Secretary Babbitt's order No. 3175 dealing with trust obligations to tribes. Agency heads have much more regulatory flexibility, such as waiver mechanisms, than they currently draw on.

Thank you for this opportunity to present supplemental elements on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronnie Lupe", with a stylized flourish at the end.

Ronnie Lupe  
Tribal Chairman

RL:mhg

**APPENDIX 1****Examples of Resource Demands by Species****Arizona willow**

In November, 1992, the Service proposed listing the Arizona willow as endangered and designating critical habitat for the Arizona willow on our Reservation despite an absence of sound biology indicating the species needed special protection here. The designation would have affected several of our Tribal enterprises, particularly the Sunrise ski area. We spent over \$30,000 to commission an economic study of the impact to the Tribe and our neighboring rural communities if operations and the ski park were curtailed. The study would have cost much more, but much work was done pro bono. The fair market value of the pro bono work was approximately \$45,000. One of our tribal attorneys had to divert a significant amount of time from other pressing issues to prepare comments on the proposed regulation, which we believe was illegal. Our biologists spent time analyzing the biological bases for the rule. We had to hire a consulting botanist to assist in preparing our comments. At the same time, we began to develop our own management plan for this particular species, when our cultural way of managing is ecosystem-based, not species-by-species. Then we learned of possible populations of Arizona willow in Utah and promptly forwarded this information to the Service, who ignored the information for over a year. One Service botanist went to far as to comment she did not "care about the Arizona willow," but rather wanted to "get cattle off the Forest Service lands." Meanwhile, we kept incurring costs. Finally, in the face of overwhelming evidence of large populations in Utah, coupled with the development of an interagency cooperative agreement for the Arizona willow, the Service withdrew the proposed regulation.

**Loach minnow**

Pursuant to its trust obligations to provide a safe source of drinking water on the Reservation, the Indian Health Service planned and secured funds (\$700,000) to build a water diversion facility on the Reservation. The facility was sorely needed for public health reasons. During the protracted Section 7 consultation process, the Service issued a draft adverse biological opinion that proposed alternatives that were not practical or were not feasible. One Service biologist even suggested that our people not live in Whiteriver. The project never went forward.

**Mexican spotted owl**

Timber is the lifeblood of the White Mountain Apache Tribe. It provides more jobs and income than any other enterprise on our Reservation. The listing of the spotted owl diverted enormous resources from other matters. Our tribal wildlife biologists, foresters, attorneys, environmental and watershed planners, as well as BIA staff have had to focus

on this one species, rather than place emphasis on ecosystem management. We have expended money and human resources on owl surveys and development of our spotted owl management plan. Implementation of that plan is ongoing and will require resources for some time to come. Our attorneys continue to spend time on owl issues, whether they arise directly with the Tribe or with the BIA, through Section 7. Our Game and Fish Department estimates that it has spent \$110,000 to date on spotted owl inventories and other owl activities. It will take another \$50-60,000 to complete the owl inventories.

#### **Razorback sucker**

One of the most disturbing applications of the ESA on our Reservation was the designation of critical habitat for the razorback sucker. We believe this designation is illegal. We spent nearly \$15,000 in legal, economic, and other consulting fees and technical staff time just responding to the proposed regulation. Our biologists concluded there was no sound biological basis for the designation. A biological study by a respected fish biologist that provided support for not designating critical habitat on our Reservation was ignored by the Service. In spite of the written protests filed by the numerous tribes potentially affected by the designation of critical habitat for four Colorado River fishes, including the razorback sucker, the Service did not evaluate the economic impacts to the tribes of the designation. Ironically, one reason the razorback sucker and the other Colorado River endangered fishes have declined is because of stocking of exotic fishes years ago by the U.S. Fish and Wildlife Service. Moreover, the Service since has stocked millions of razorback suckers, yet few have survived.



Yale University *New Haven, Connecticut 06511*

SCHOOL OF FORESTRY AND  
ENVIRONMENTAL STUDIES

November 15, 1995

The Honorable John McCain, Chairman  
Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510-6450

Marsh Hall  
360 Prospect Street  
(203) 432-5100  
FAX: (203) 432-3809

Dear Chairman McCain:

I write to respond to your letter of September 25, 1995, which inexplicably arrived at my office this week. I hope the responses below to the supplemental questions can still be of use.

1. I believe that the transition of BIA to a technical support and monitoring organization can be approached as a natural part of the general restructuring now going on throughout government. The Area and Agency offices of BIA now perform mostly as technical service organizations, and they should strengthen their ties with research organizations and adopt a more overt "customer service role". It would be important to consult with Tribes now working with Areas and Agencies to see that their differing needs are incorporated into the design from the beginning. So a sequence of activities for the restructuring might be:

1. Survey Tribes within the Area or Agency for needs,
2. Inventory the BIA for skills and functions that meet the expressed needs,
3. Construct a timetable and detailed plan for the future of each unit, with Tribal participation, allowing for differences among Tribes and area needs,
4. Create the separate Trust Oversight structure called for in IFMAT so that it is clear that oversight is separate from technical assistance,
5. Implement the detailed plans stepwise, so that later changes can benefit from earlier ones, and
6. Monitor the changes closely for possibilities for improvement.

These steps might be best facilitated by an external group, perhaps configured like the InterTribal Timber Council/IFMAT relationship.

It is my guess that a process like this would be supported by Tribes, but of course I am not at all empowered to speak for them.

2. I think the IFMAT assessment was relatively successful and painless, and I think this was mostly due to the careful

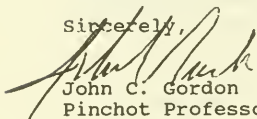
preparation and planning, and oversight, on the part of the ITC. Without ITC as an intertribal organization in the lead, I think it is safe to say that our data gathering in the field would have been much harder and in cases probably impossible. ITC assigned a high-quality oversight group which kept in close touch with IFMAT and frequently reviewed our progress. This review was absolutely critical to the quality of the final product. Another element was the survey of Tribal opinion carried out as part of IFMAT under strong ITC guidance and assistance. We learned much that was unexpected and that aided our analysis. So I would suggest that other assessments be structured similarly in these ways. If possible I would suggest some overlap in the Tribal oversight groups and in the assessment teams. In particular I would suggest consulting Gary Morashima, Larry Blythe and Calvin Mukumoto regarding process.

3. The last annual status report I've reviewed was, I think, 1992. We used them as part of our IFMAT process. I think they could be restructured to address the major points in the IFMAT report, if that is the intended direction. I would also think they might be replaced by an annual independent assessment, perhaps by ITC, based on the sort of statistics gathered for the current report, and addressing the same questions IFMAT did.

4. I think the IFMAT report does offer a basis for future assessments of tribal forest management activities. There were many categories in which we had trouble finding good data (resources other than timber, costs of management, and status of integrated plans, to name three). Remedying these data gaps is an important future task. Comparative monitoring over time, using IFMAT as at least a partial baseline, seems to me to be the only way than progress and problems can be systematically identified.

Again, I wish to thank you for the opportunity to testify on this most important topic, and to also thank you for your personal leadership in these matters.

Sincerely,



John C. Gordon  
Pinchot Professor

cc InterTribal Timber Council  
Dean Jared Cohon



*Executive Office of the Chairman*  
**WHITE MOUNTAIN APACHE TRIBE**

RONNIE LUPF  
 CHAIRMAN

November 13, 1995

Senator John McCain  
 U.S. Senate Committee on Indian Affairs  
 S11-838 Hart Senate Office Building  
 Washington, DC 20510-6450

Re: National Indian Forest Resources Management Act

Dear Senator McCain:

This letter is in response to the question you raised at the recent hearing on implementation of the National Indian Forest Resources Management Act regarding damages incurred from federal mismanagement of our Tribal forest resources and costs of restoration. This letter presents our best estimates of those costs based on information currently available. To provide the Committee with a complete and detailed accounting of all the damages and estimated costs of restoration would require a major effort by our staff and outside consultants that would not be possible to complete before close of the hearing record.

**Direct financial loss to the Tribe from overcutting of our forests**

A study of our forests conducted in 1987 concluded that BIA management of the harvest of our forests in conformity with the BIA allowable annual cut was greatly reducing the sawtimber volume of the forest and destroying the forest economy of the White Mountain Apache Tribe. The BIA practices resulted in a decline in the volume of sawtimber by 529 million board feet between 1968 and 1984. During the same period, the value of pine stands in the forest declined by \$73 million, a decline in value of 20 percent from \$365 million to \$292 million (in 1987 dollars). The first year of the study period, 1968, was chosen because that was the first year of the BIA's continuous forest inventory.

This loss in the value of our forests directly translates into a net loss of income to the Tribe from those forests. Using the numbers arrived at in the 1987 study and extrapolating back to 1946 (the cut-off date for claims in our case brought before the Indian Claims Commission) and forward to 1990 (after which the Tribal Council significantly reduced the annual allowable cut), we estimate a net annual loss to the Tribe of \$3.6 million. That number is based on a total loss of principle (value of the forest) for the period 1946-1990 of \$182 million and a loss of 2% annual growth, or interest, rate.



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 FAX: (602) 338-1514

While the reduction of the annual cut and other measures taken by the Tribe will stop this loss of our forest and return the forests to sustainability, the forests unlikely will ever return to their former value for sawtimber.

#### **Damages to streams and riparian areas from forest mismanagement**

Forest mismanagement by the Federal Government on the Fort Apache Indian Reservation has resulted in several impacts to streams and riparian areas. These impacts are a result of:

- Overcutting
- Improper road construction in sensitive drainages, which has caused erosion, sedimentation, and severe downcutting
- Large, destructive wildfires resulting from decades of BIA-sponsored fire suppression policies
- Heavier grazing pressure on streams from elk, feral horses, and cattle due to the replacement of understory forage with thick tree growth and underbrush (due to lack of thinning and proper fire management)

These conditions have caused many streams on the Reservation to be severely altered from their natural condition, so that they can be categorized as dysfunctional (due to loss of native plants, fishes, and stable morphology), particularly in the Carrizo, Cibecue, North Fork, East Fork, and Black watersheds. These streams could be restored with two primary restoration strategies: natural channel restoration and road obliteration / erosion control.

#### **Natural Channel Restoration:**

Many of the larger streams on the Reservation (Cibecue, Carrizo, Cedar Creek, Corduroy, East Fork) have been severely impacted. David Rosgen, a hydrologist with expertise in stream channel restoration, has demonstrated that braided channels, such as those found on the Reservation, generally do not recover on their own except at intolerably slow rates. Therefore, he has developed a system of natural channel restoration using designs based on the natural processes affecting the stream and the use of natural materials. His initial costs of this approach was \$60 per linear foot (Blanco River Case Study in Restoration of Aquatic Ecosystems, National Research Council, 1992). We estimate that there are 82 miles of streams on the Reservation in this condition for a total of \$25,977,600.

#### **Road Obliteration / Erosion Control**

Many of the watersheds on the Reservation are densely packed with roads in sensitive areas. Almost all the streams in the Upper Carrizo Watershed have a legacy of logging roads that go directly up the drainages. Carrizo Creek is now a braided system for over 40 miles as a result of these roads and a catastrophic fire that occurred in 1970.

A Watershed Restoration Manual, developed by Redwood National Park (1992), estimated costs for the following types of conditions:

- Medium Sized Road, frequent small to medium size stream crossings: \$20,000-\$40,000 / mile

- Major, mid-slope haul road, frequent large stream crossings: Cost \$40,000 - \$70,000 / mile
- Major Road, low on slope, frequent large stream crossings, unstable terrain: Cost \$100,000 - \$250,000 / mile

Most of the problem roads on the Reservation are low on the slope, stream crossings may be large or small. Hence, we estimate an average cost per mile of \$105,600 (\$20 / linear foot). Based on this rate, for 250 miles of stream, we estimate the total cost of restoration for these areas to be \$26,400,000.

With greater experience, the cost per mile for both of these restoration techniques could decrease. However, many are in somewhat remote locations, so average costs might be higher.

The Tribe recently submitted three proposals to the Arizona Water Protection Fund Commission that addressed degradation of selected watersheds:

- Gooseberry Watershed: to implement some watershed protection measures, but the loss of native fish species was not addressed due to severe state of degradation. Total Cost: \$126,000 requested from AWPf, \$188,000 from Tribe, \$59,000 from other sources
- Lofer Cienega: to implement wetland restoration measures. Total Cost: \$161,204 requested from AWPf, \$152,000 from the Tribe, \$24,000 from other sources
- Cibecue Watershed: to develop a plan to address watershed impacts, to implement watershed restoration measures on one tributary, and to reintroduce native fishes. Total Cost: \$480,000 requested from AWPf, \$238,000 from Tribe, \$38,400 from other sources

The Tribe is currently implementing riparian restoration projects using \$75,000 from the US Fish and Wildlife Service Challenge Cost-Share Grant, with \$100,000 in match from the Tribe.

Based on these projects and proposals, I am confident that stream restoration is a realistic endeavor for the Tribe. Our greatest need is for long-term funding for this program and for assistance in establishing an ecological training program for tribal youth. The continuation of this program's success ultimately depends on having well-trained Apache natural resource professionals to lead it.

I appreciate the opportunity to provide these additional comments about the damages to our forests and related damages to our streams and riparian areas, and our ongoing efforts to restore portions of our reservation.

Sincerely,



Ronnie Lupe  
Chairman, White Mountain Apache Tribe



TESTIMONY OF HONORABLE PLINY MCCOVEY  
COUNCILMEMBER, HOOPA VALLEY TRIBE  
TO  
SENATE INDIAN AFFAIRS COMMITTEE  
OVERSIGHT HEARING ON INDIAN FORESTRY  
SEPTEMBER 20, 1995

Introduction

Honorable committee members, Chairman McCain; thank you for the opportunity to present testimony to the Senate Indian Affairs Committee on Indian forest management, particularly with respect to the implementation of the NIFRMA and the IFMAT recommendations. We would like to thank the committee in general, and Chairman McCain in particular for the work and guidance in having P.L. 101-630 enacted.

Our testimony will point out where the NIFRMA affects on-the-ground management. Also, we will respond to several of the IFMAT recommendations and how these recommendations are being implemented at Hoopa. Finally, our testimony will document the trustee's management of Indian forests. This part of our testimony is structured very closely to similar trust reviews conducted by the BIA and the Hoopa forestry program.

Setting

The dominant forest type at Hoopa is the mixed evergreen type which is composed of old growth Douglas fir, tanoak and madrone. About 38,000 acres of the 80,000 acres are cutover, mostly by old style clearcutting. The current mix of logging systems is about 60% cable and 40% tractor. Over 95% of the Reservation is tribal trust, very little is allotted. There are about 550 miles of forest roads which receive sporadic maintenance, mostly as a consequence of timber sale activity. There are also 1280 miles of streams. The Reservation once supported abundant anadromous fish runs, but these are mostly gone now. The federally listed peregrine falcon (2 pairs), spotted owl (42 nesting pairs) and marbled murrelet (not known to nest) all occur on the Reservation. Also coho salmon and summer steelhead are candidates for listing as threatened by the NMFS.

The Tribe logs about 500 acres of oldgrowth per year. The allowable cut is 10.5 million board feet of conifers and 3.2 MMBF of hardwoods. The Tribe's logging corporation buys all of the tribal timber, conducts the logging and hauling and receives whatever profit is left over.

Hoopa is a compact tribe, in fact, Hoopa was one of the initial 9 tribes to participate in the Self Governance Project. Hoopa continues to be a key player in the Self Governance project along with Lummi and Quinault and supports the permanent legislation. The only retained BIA functions are Sacramento Area Office signature authority on timber sale contracts and NEPA FONSI's and by the Northern California Agency trust fund management of stumpage and IIM accounts.

NIFRMA implementation - has it helped or hindered forest management

We believe the NIFRMA has described the tools to implement state of the art ecosystem management, but the tools themselves are not completely in place, or Tribe's are not comfortable enough with the tools yet to use them effectively. As always, funding remains a substantial issue. The tools may be described, but if there are not funds sufficient to use the tools, then Tribes will

continue down the current path of less than state of the art management. The following are examples of tools available to Tribes from the NIFRMA but not yet in widespread use.

#### A. Revisions to 25 CFR 163 Regulations to Reflect NIFRMA

As the committee is no doubt aware, the process of issuing the corresponding regulations to update 25CFR 163 and to implement the NIFRMA are still not finalized. We strongly advocate finalizing the regulations and issuing them as soon as possible. We understand the current mood in Congress is anti-regulation. However, barring the complete elimination of existing regulations, there is a need to implement most laws by issuing regulations which more clearly contain the necessary language to implement the act. As an example, most Tribes would benefit from the issuing of the regulations since the revised regulations substantially increase the authority of the Secretary or his designee to sign timber sale permits up to \$25,000. In our case this would clearly speed the process of preparing and administering small timber sales. At current prices, the \$10,000 limit in effect today requires us to solicit bids and advertise for 20 days on volumes of timber as low as 2 truckloads of logs. Finalizing the regulations would reduce bureaucracy and improve timeliness of issuing permits in our case since the BIA would no longer have to sign "contracts" for sales as small as 2 truck loads of logs.

#### B. Section 307 Trespass

The regulations give substantial authority to "designated" individuals to cite for trespass and for arson. However, the authority to cite is lessened in PL 280 States where criminal and civil jurisdictional and procedural issues are such that relatively little enforcement actually takes place. As an example, the State of California is responsible for criminal or civil prosecution of arson. This authority could be exercised by the Tribe under the NIFRMA and would be substantially increased if the regulations were issued. However, funding for arson investigation in particular is buried within the "block grant" which Congress appropriates for State Justice Departments for PL 280 Indian justice programs. In PL 280 states, funding for arson investigation is routed from these block grants appropriated by Congress to the State, then to the counties. However, once the funds reach the state, no one at the State or County level seems willing to identify the amount earmarked for Reservations.

Thus, while NIFRMA and its implementing regulations could help tribes, the issue of PL 280 state control makes the citation, prosecution and enforcement of trespass and arson far more complicated than on adjacent federal, state or private lands.

#### C. Section 308 Direct Payment of Stumpage Receipts

To our knowledge, no regulations have been published (per section 308 of the NIFRMA) which would enable purchasers of tribal timber to make direct payment for stumpage to Tribal accounts. The current process at Hoopa points out both the absurdity of the process yet the apparent necessity of the process in order to ensure trust oversight of the stumpage payments. Tribal timber sales will generate about \$6 million dollars in stumpage collections, \$600,000 in administrative fee collections and approximately \$100,000 in IIM stumpage receipts for allotment sales. Currently, the BIA still has the retained function (at Tribal insistence) of overseeing stumpage payment collections.

Publication of revised direct payment regulations would enable the Tribal Enterprise to make direct payments upon presentation of the bill for collection issued directly from the forestry office to the stumpage purchaser. On the one hand, this would substantially ease the process and reduce the

regulatory burden. In effect we could bypass the entire process by sending a bill for collection to the Enterprise and then meeting at the local bank to make the transaction. The entire process would take about 15 minutes instead of 3 weeks.

On the other hand, the Forestry Office will then by necessity, be required to provide more oversight of the process to perform the trust accountability necessary to maintain the BIA's retained function and the trust asset management expected by Tribal members.

#### D. Section 309 Secretarial Recognition of Tribal Laws

Section 309 provides for Secretarial recognition of tribal laws. The Tribes 150 page Forest Management Plan, explicitly defines trust management. In that definition the Forestry Department recommended and the Council adopted most of the existing federal laws, statutes, and regulations relating to NEPA, Endangered Species, Archaeological and Cultural Protection, and Clean Water Act provisions. In doing so, the Tribe had to balance sovereignty with the day to day need to continue to produce timber, employ tribal members, provide jobs in the community etc.

The Tribe has not attempted to adopt alternatives to the above laws generally because the need to both comply with the existing law while awaiting Secretarial approval of a Tribal law requires nearly twice the effort as complying with the existing law. For instance, in order to have Secretarial approval of an alternative to the ESA, the Tribe will need to have an approved Habitat Conservation Plan, or an alternative to the ESA. To complete either task requires all of the normal ESA consultation processes to continue in order to assure timely timber management, while at the same time working on alternatives.

Secretarial recognition of Tribal laws has not, to our knowledge, been successfully implemented partly because the effort to adopt alternatives to high profile laws such as the ESA or the Archaeological Resources Protection Act (ARPA) comes with the requirement to have the Secretary sign such alternatives even when he or she is in charge of agencies administering such laws. The Secretary has both a trust responsibility to tribes, but is also the administrator of the Fish and Wildlife Service and the National Park Service which administers Historic Preservation Act provisions. These conflicts are obvious where critical habitat is proposed on Indian Reservations for endangered species. In these instances, the Secretary's perceived trust responsibility for Indians we assume must have been outweighed by his/her assumed responsibility to hold management of endangered species in trust to the people of the United States.

Hoopa has begrudgingly complied with the ESA, not because its the law so much as because most of the on-the-ground science associated with managing for spotted owls or salmon makes good biological sense. The Tribe has certainly benefitted from the dramatic increase in the price of timber over the past several years which is mostly attributable to ESA reductions in timber supply.

There are instances where the Forestry Department and the logging enterprise could benefit from increased flexibility associated with relaxing some survey requirements attached to marbled murrelet consultations. However, the Tribe has a good working relationship with the USFWS and receives a relatively quick turnaround on biological opinions, usually within 4-6 weeks after submittal.

Thus, given the present situation, the Tribe has not elected to request Secretarial approval to comply with Tribal laws enacted as alternatives to existing laws such as the ESA or the ARPA. Among

various considerations to take into account are whether the wholesale elimination of these laws could result in increased forest management flexibility and volume to offer, but result in a substantial decline in timber prices in the local area. Currently, Hoopa volume comprises about 2.5% of the local Humboldt County log market, although Hoopa volume probably accounts for 5% of all old growth delivered to Humboldt County sawmills.

#### IFMAT implementation

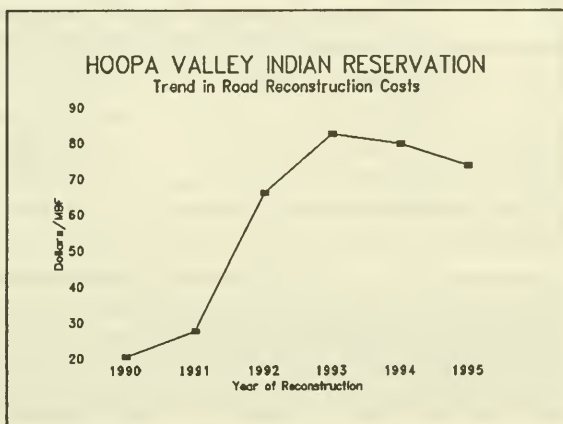
The Hoopa Valley Tribe was one of 35 tribes visited by the IFMAT team. The Tribe has reviewed the IFMAT recommendations and generally supports the recommendations. Here, we focus on several recommendations and what these recommendations mean on-the-ground.

#### **A** Make major investments in remedial road work ..... (IFMAT page V-11).

The IFMAT report finding 4(c), page V-8, and the recommendations with respect to road system investment of \$200 million are certainly in line with our on-the-ground experiences. Prior to the Tribe taking over management, BIA investments in road reconstruction and maintenance were approximately \$2.50/MBF. Most BIA proposed road reconstruction involved little more than brush clearing, dust abatement with water and some culvert installation.

Tribal stumpage pays for these costs. The trend in road costs over the past 5 years since the tribe took over the program is dramatic. The graph below shows the trend in road costs over the past 5 years. We agree with the estimates made by IFMAT. Investments in infrastructure during the tenure of the BIA were minimal, generally in the range of about \$0.50/commercial acre.

The Tribal investment has risen dramatically. The average road reconstruction cost during the past two years has been \$57.00/MBF for betterment and \$17/MBF for maintenance. These costs are estimated at about \$13,000/mile for betterment and \$4,000 for maintenance, which is generally in line with the IFMAT lower end investment estimate of about \$25,000 per mile.





**B** Make major investments in ..... the activities needed to reduce forest development backlog (IFMAT page V-11)

The Tribe has made major investments in future stand management needs in order to anticipate the impacts of brush competition and to increase forest health through stocking control in young plantations. The current forest development backlog is mostly (but not completely) associated with past BIA management before 1980. The Tribe has been receiving about \$235,000 annually to help reduce the backlog of forest development. By far, the primary forest development backlog at Hoopa is from the competition generated from sprouting brush which negatively impacts planted and natural seedlings. At current rates of spending, the forest development backlog will be eliminated in 75 years. The Tribe is aggressively avoiding creation of future backlog by taking collections from current timber sales and depositing these in Tribal holding accounts where the funds accrue interest. Based on 4% interest, the Tribe is attempting to collect sufficient funds from current timber sales to treat these stands at ages 3 and 15. Current collections for treating future forest development needs are about \$385,000 annually for the period of 1993-1995. Current collections from timber sales for site preparation and regeneration are approximately \$541,000 annually, based on the period of 1993-1995. The Table below indicates the change in collections and the objectives of the Tribe to help ensure future forest development backlog is not created.

Comparison of Investments in Forest Development at Hoopa Between BIA and Tribal Management		
Item Collected or Appropriated	BIA (1990)	Tribal Management (1993-1995 average)
Forest Development Backlog	\$236,000	\$236,000
Regeneration of Current Harvest Units	\$335,000	\$541,000
Current Collections from Stumpage for future TSI Obligations	\$190,000	\$385,000

In spite of the effort to anticipate future backlog, the Tribe still needs drastic help to reduce the past backlog. In 1991 the Tribe prepared a supplemental forest development plan to treat most or all of the forest development backlog on the Reservation. The Supplemental plan was presented to Congress during appropriations testimony in 1991 but was not funded. The proposed action was cost effective and included an annual appropriation to Hoopa of \$900,000/year which would reduce the backlog in 20 years, had a high benefit cost ratio and resulted in a moderate increase in the allowable cut 2 MMBF/year resulting in an additional \$1.2 million in additional net revenue annually.

The Tribe is willing to fund future regeneration so as not to create backlog, but cannot be expected to fund the backlog created from past management.



- C To meet tribal visions for Indian forests, increase per-acre funding to what the National Forests incur for coordinated management (IFMAT V-11)

Total forestry funding at Hoopa is approximately \$1.6 million per year for a cost/commercial acre of \$21.80. This is substantially higher than estimates for other Indian forests. However, return per commercial acre is estimated at \$59/commercial acre in 1993 <sup>1/</sup> and at \$85/commercial acre in 1995 (see Table below). The IFMAT analysis showed nationwide that BIA funding at \$10.30/commercial acre which is similar to the \$11.57/acre BIA funding at Hoopa. The difference has been made up with tribal funds through use of administrative fees of about \$10.22/acre. The Tribe cannot continue funding the program at this cost simply because administrative fees will diminish given current spending and accruing patterns.

Comparison of Harvest Value/Commercial Acre <sup>1/</sup>	
BIA Area or Location	Value Harvested/Commercial Forest Acre
Sacramento Area	\$38.16
Portland Area	\$51.16
Phoenix Area	\$14.34
Minneapolis Area	\$6.98
Hoopa Tribe	\$59.97
BIA Total	\$23.50
USFS Total, IFMAT (1991 values)	\$16.25
USFS Total, 1994 <sup>2/</sup>	\$11.38

<sup>1/</sup> Forestry Program Funding and Position Analysis, FY 1993, Branch of Forest Resources Planning, March 1994.

<sup>2/</sup> National Summary, Timber Sale Program Annual Report, March 1993, USDA Forest Service.

Nonetheless, we completely concur with IFMAT that funding for most tribes (including Hoopa) is very low compared to the USFS and is abysmal compared to private industry. In addition, it is apparent that Tribal timberlands generate more revenue/commercial acre (141% more) than USFS lands yet have 63% of the funding. We suggest a more reasonable and equitable funding solution would be to reduce USFS funding and increase BIA funding for forest management using the savings from USFS funds.

- D Improve the BIA CFI system (IFMAT recommendation pg. V-49)

The Hoopa Valley Tribe is one of 35 or more tribes with continuously measured forest inventory plots. There are approximately 517 plots in Hoopa, which have been measured 4 times, the last time in 1986. IFMAT recommends "Inventory support staffs at the national and area levels should be consolidated and the number of ...[people] ... on those staffs increased." We strongly support that

notion, in part because Hoopa is due to measure its CFI next year and we rely heavily on the support of the Branch of Forest Resources Planning Office to provide the technical assistance necessary to measure these plots. Indeed, we have written Assistant Secretary Deer about our concerns the BIA would distribute the analysts from the BOFRP office to each area and downsize the number of active foresters, all to achieve a Central Office reduction which is completely opposite of the IFMAT recommendations.

Given sufficient funding and time, we are confident private consulting firms could supply the same expertise, although such firms are few and far between. It is far more cost effective, as far as we are concerned, to maintain the current office since the analysts need no training in the statistical, database or forest analysis procedures to help tribes. Conversely, the steep learning curve required for a consulting firm to provide such services would clearly outweigh the current funds available.

#### Trustee review

The BIA and Tribe jointly conduct an annual trust review. These trust reviews provide a basis to determine whether the BIA and/or the Tribe are in breach of trust management. The Tribe strongly believes the Hoopa definition of trust management, documented by the 149 pages of the Tribes FMP, and signed by the Secretary, provide ample basis to determine whether management is in conformance with the FMP definition of trust.

For this oversight hearing, we have looked at trust reviews from 1993 and 1994 from following the following Forestry Department programs; Administration, Planning, Silviculture, Timber Management, Wildland Fire, Wildlife, Roads and the Tsemeta tree nursery. The 1994 trust review used the Tribe's approved FMP as a trust oversight bench mark in comparing trust management with the agreed upon BIA/Hoopa trust definition. Key trust questions reviewed include the following 2 of 14 questions from the 1994 trust review.

- a. Is the trust asset in imminent jeopardy?
- b. Is the program adequately funded at a level that fulfills the trust obligations?

In assessing the answer to the first question, all of the programs believed the management by the Tribe was such that assets were not in imminent jeopardy. While assets were not in imminent jeopardy, many assets were being significantly degraded. Both the terms jeopardy and significantly are legal terms, the first used by the USFWS in ESA consultations to deny projects which might result in jeopardy to a listed species. The second term is a legal term from NEPA which is used to determine whether an environmental impact statement needs to be prepared for a proposed project. We interpret these terms in light of the trust review such that while the Tribe and the BIA are not YET in breach of the trust definition agreed upon by the Tribe and Secretary, legal requirements for further action were being generated due to the significant degradation of trust assets. From our limited perspective in Hoopa, we believe the trust assets of Tribes across the nation are not currently in imminent jeopardy, but are experiencing significant declines in trust value. At Hoopa at least, part of significant decline is associated with funding which is inadequate to protect trust assets.

In answering the second question from the 1994 trust review, the Wildland Fire program answered NO! to question b.) Is the program adequately funded at a level that fulfills the trust obligations? Based on such funding in 1994 the Tribe has a legal basis to terminate the joint agreement on the definition of trust management as codified in the 149 pages of the FMP. Of course, given current budget constraints, termination of the agreement would not necessarily benefit either party. Based

on the potential for a legal breaching of the joint trust agreement, Tribes must seriously question the very profound question as to whether to terminate Tribal Treaties, and reassert their control over lands "given away" in return for trust management of Reservation lands. We believe there would be a similar conclusion at the national level.

### Conclusion

We believe the NIFRMA will provide tools for Tribes to streamline their forest management programs, but the tools have not been tested sufficiently to determine if they work. Just like buying a new weeding hoe for your garden, you can't tell if it works unless you get it dirty. We strongly encourage the committee to push for getting the regulations published and getting the NIFRMA tested and used.

The IFMAT report highlights what many in Indian Country already know, Tribes are underfunded, and assets are being significantly degraded. Tribes are doing more with less. Tribal visions will not be realized without significant investments in forest resource management. Tribes are increasing their investment in the forest at a time when the the government is downsizing. Tribes are investing in the seedlings and fertilizer for the garden while the government is reducing its contribution to the garden by eliminating funding for weeding, pest management, etc. The government is no longer providing sufficient funding so the garden can be safe from fire or from soil erosion. The infrastructure of the garden such as the paths and fences are significantly degraded, perhaps jeopardizing the very productivity of the garden itself.

Tribes understand the consequences. For some Tribes, Treaty rights have been abrogated to the point where the treaties are no longer valid. Tribes will need to seriously question the matter of terminating treaties and reasserting control over their former territories.

The Hoopa Valley Tribe appreciates the opportunity to testify before the Senate Committee on Indian Affairs.

TESTIMONY OF THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION  
Senate Indian Affairs Committee Oversight Hearing  
National Indian Forest Resources Management Act  
September 20, 1995

The Confederated Tribes of the Colville Reservation have a long and cherished history of land stewardship. For generations our cultural values have guided our resource management. Our traditions and beliefs demand that we respect all resource values. Today we see the general attitude of all society reflecting our ancient beliefs in a return to balancing all resource values.

We are also proud to have active participants in the development of the National Indian Forest Resource Management Act (NIFRMA) and the pending regulations. These we feel are key to returning to the balance of our past. This Tribe was also active in the Indian Forest Management Assessment Team (IFMAT). Together these two efforts provide an accurate depiction of the "state-of-the-ship" for our reservation. The issues we feel are critical to our future are well addressed in the IFMAT report.

At this time we wish to provide our perspective on which issues are most critical to future resource management and some ideas on how to effectively implement them.

NIFRMA - Publication of Regulations

Tribes nationally in coordination with the Intertribal Timber Council worked diligently to pass this act. They also volunteered many hours of staff time to insure that the regulation development proceeded in a timely manner. Since the completion of this phase the regulations have been tied up in federal review. Recently an effort was initiated to use these regulations as a test case to translate them to "plain English". This Tribe opposes such actions as both unnecessary and dangerous. The potential to change the intent and context of the regulations would be very great if this were done. They were prepared by a cross section of those individual who will be interpreting and using them. We strongly support the immediate administrative approval and publication of these regulations.

Tribal Governments have primary responsibility for directing Indian Forestry

In the IFMAT report the major recommendation focused on the need to "redefine the U.S. governments role in discharging its trust responsibility so that tribal governments have primary responsibility for directing Indian forestry". To our Tribe this means directing all resource policy as our traditions and cultures have taught us to do. The current fads of "integrated resource management" and "ecosystem management" are nothing more than resurrecting our old customs: something we strive for in all resource values. We support the recommendation in its foresight to clarify the U.S. government role to providing financial support, technical assistance, research access, and trust oversight. To fully implement this recommendation will require that each Tribe meet directly with the federal government to clearly spell out the trust relationship between the two parties. Only then can trust responsibility be truly monitored, evaluated and met

### Refocus on Integrated Resource Management, not just forest management

Probably the most devastating event in Indian country has been the imposition of single resource, style of management. Only recently is society recognizing the devastating impacts this style of management has had on resource values. Elders have taught us for many generations of the inter-connection of all forms of life. They taught us to respect all things and to use only what is needed. In order to meet this responsibility we recognize the importance of beginning with the planning of our management activities. Unfortunately today's generation struggles with the federally imposed resource management structure and funding process that divides resources into distinct specialties. Here on our reservation we are struggling to make progress in breaking down these paradigms. The real challenge still comes from the federal system where any attempt to alter this format is met with disbelief and resistance. We recommend that the federal government abandon these old age philosophies and adopt more holistic concepts being adopted world-wide. This one step would greatly assist us at the reservation level to become more efficient and effective in meeting our management goals.

### Increase base-line funding and investment for Indian forest management to levels comparable to those of the National Forests for coordinated resource planning and management.

The current IFMAT study continues to show what previous studies have confirmed, resource management in Indian country is grossly under-funded. This is further complicated by the fragmentation of funding for resource management and the strings attached. Together these two factors cause tremendous operational inefficiencies and confusion of meeting Tribal goals. Often times internal, paternalistic federal goals over-ride Tribal management objectives.

Several areas were identified as needing additional funding in order to raise the level of Indian resource management comparable to that on other federal lands. These include:

1. Increase baseline funding by \$121 million (182%) for coordinated resource management planning. This alone would improve the quality of resource management by providing adequate personnel to properly conduct integrated resource planning. This step is essential to preventing further degradation of Indian resources and allow ecosystem restoration to occur.
2. Increase timber sale administration by \$34 million. This would allow adequate timber sale preparation, environmental coordination, timber sale administration, engineering support, and transportation development and maintenance. Current shortfalls in these areas often lead to cutting of corners and subsequent resource damage.
3. One time investment of \$200 million to correct road deficiencies: Shortfalls in road engineering and maintenance impacts on management has caused more resource damage than all other activities combined. Tribes have been required to balance the long term quality of road construction versus timber revenues which are essential to their very survival. Correction of these deficiencies would help to make tremendous strides to fixing resource damage both on and off reservation lands.



4. Increase funding to address forest development backlog and prescribe burning for maintenance of forest health: Two areas critical to forest health and future resource values is the need to eliminate the forest development backlog and to maintain these conditions using prescribe fire. These are two areas where are Tribe leads the nation in terms of accomplishments. These activities are also compatible with historic conditions and Tribal customs. Our ancestors used fire for generations to meet numerous resource values (food, medicines, fuel, spiritual, etc.).

Most essential to the funding issue is to: 1) Provide adequate funding, 2) Remove stipulations and strings, and 3) reward Tribes for efficiency. Many of today's funding processes divert money from efficient participants to inefficient ones. This policy would well serve all federal agencies.

Expedite the education portion of NIFRMA by increasing funding and broadening the scope of participants:

The current forestry intern and cooperative education programs have been both effective and well supported as they developed Indian resource professionals. Unfortunately many Tribes are becoming self-sufficient faster than Tribal members can be developed to fill needed slots. With many BIA employees reaching retirement replacements are still lacking. Under NIFRMA, adequate procedures and options have been identified to correct this situation. With adequate funding and adoption of the regulations this program could quickly become a reality.

Strengthen natural resource inventories:

Past efforts at providing inventories on Indian reservations were limited primarily to Continuous Forest Inventories (CFI). While these have provide valuable information, the time has come for them to be modernized to analyze forestry information and provide better projection of future trends. Forest management is more than timber management. The inventory system needs to be enhanced by broadening the scope to address more of these resource values. The system then needs to incorporate mechanisms for monitoring management activities and their affects the whole ecosystem. Only when the complete system is functional will we know the long term impacts of our actions. It is essential that we preserve and protect all of the processes that function in the ecosystem.

Land consolidation within reservations:

Repeatedly mixed land ownership creates difficulty to planning and implementing management prescriptions both on and off reservations. Differing management objectives often leads to more detrimental effects on resources and less efficient management implementation. This is one area where Tribes, states private individuals, and the federal government could work together to consolidate scattered ownership on and off reservation to the long term benefit of all without great expenditures of money.

Overall, enactment of NIFRMA has set the stage for resolution of many long standing issues and provides the opportunity to improve both the management and health of all Indian resources.

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Overall, enactment of NIFRMA has set the stage for resolution of many long standing issues and provides the opportunity to improve both the management and health of all Indian resources.



## HUALAPAI TRIBAL COUNCIL

P.O. BOX 168 • PEACH SPRINGS, ARIZONA 8643A • 602 769-2216

September 15, 1995

The Honorable John McCain, Chairman  
Committee on Indian Affairs  
SH-838 Hart Senate Office Building  
U.S. Senate

Dear Mr. McCain,

The following statement is submitted for the record of the Committee's September 20, 1995 oversight hearing on Indian forestry.

The Hualapai Tribe is requesting that the U.S. Government provide the necessary funding to support the approved Hualapai Forest Management Plan at an amount of \$ 675,000.00.

As background information, the Hualapai Tribal Forestry Department has been in existence since 1978 and presently contracts with the Bureau of Indian Affairs (BIA) under PL93-638 three forestry functions: 1) Forest Development, 2) Timber Sale Preparation and Administration, and 3) Forest Inventories and Plans.

First, I would like to quote two sections from the National Indian Forest Resources Management Act (PL101-630, Title III).

### Sec.303 Purposes.

The purposes of this title are to -  
(4) provide for the authorization of necessary appropriations to carry out this title for the protection, conservation, utilization, management, and enhancement of Indian forest lands.

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The statement is required to  
be submitted to the Committee  
by the tribe.

The tribe has not been able  
to secure the necessary land  
management funds needed.

The tribe has a long history of life  
in the area. The tribe has been  
there since the first settlers. The sun  
and moon and the stars of the  
firmament are the same. Though hard  
work, conservation and edu-  
cation, something is possible  
and we must avoid the past and  
future, look ahead.

The rocks in the middle rep-  
resent the water and other  
things which were here before  
us.

The green around the symbol  
are the trees representing our  
name Hualapai. PEOPLE OF  
THE VALLEY.

Sec.304 Definitions.

For the purposes of this title, the term -  
(5) "forest management plan" means the principal document, approved by the Secretary, ... which shall include -

(A) standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels.

Next, I would like entered into the record the majority of Appendix A of the Secretarial approved Hualapai Forest Management Plan for the period January 1987 to December 1996 as follows:

APPENDIX A. Economic Aspects

General

The forest and woodland resources have been instrumental to the past and present economic development of the Hualapai Tribe. These resources occupy 513,992 acres or 52% of the land base. Logging, hunting and the evolution of the cattle industry have provided the primary historical use on this land. Recreation and mining offer additional opportunities for economic progress. In the future the natural resources of the Hualapai Tribe should continue to provide the best potential for economic development, job creation and independent self determination for its people.

Tribal Income

Timber sale revenue generated from the last cyclic cut over the forest, from 1951-1962, amounted to \$1,044,121.00 in stumpage receipts to the tribe, and removed 63 million board feet (MMBF). Two additional timber sales have been completed since: the Prospect Valley fire salvage sale in 1978-79 and the Twenty Pines sale in 1986-1990 which generated \$422,609.00 and \$331,081.00 respectively. The Prospect Valley sale removed 4.38 MMBF and the Twenty Pines Sale removed 7.23 MMBF. Following the implementation of this plan, future timber sales are anticipated on an annual basis. If the AAC of 3.45 MMBF/year is harvested as planned, an annual income of approximately \$200,000 - \$300,000 (\$60-\$90 per MBF) in stumpage alone may be received.

The sale of commercial woodland permits has averaged \$4,100 per year over the last ten years (1982-92) at the rate of \$3.50 per cord. The Hualapai Woodland Enterprise (HWE) was initiated in 1991 when \$88,500 was received to fund our grant proposal. The HWE is anticipated to increase stumpage income by \$1,200 - \$2,100 per year depending on production.

Tribal income received from hunting, fishing and sightseeing permits within the forest and woodland currently (1992) amounts to approximately \$300,000 a year.

The cattle industry generates approximately \$700,000 annually in income to tribal members. In 1992 \$29,303 was collected in grazing fees at \$1.54 per animal unit month. Of this, half went to the tribes General Fund and half to range improvement work.

### Individual Income

The Tribal Forestry Program has been the largest federally sponsored program (PL93-638 contract) on the Reservation since 1977. In 1992, Hualapai Tribal Forestry (HTF) provided jobs for six full-time staff members, six seasonal force-account thinning crew members, and approximately thirty-five seasonal sub-contract thinners. Over the last ten years, the average HTF budget has been \$431,000 of which approximately two-thirds or \$287,000 is spent in salaries.

The individual income anticipated to be generated as a result of this management plan's timber sale program is estimated at \$150,000. This includes the wages of fallers, skidder operators, loaders, drivers and laborers. Individual income currently received through the sales of commercial woodland products amounts to approximately \$140,000.

The forestry fire section of the BIA provides five full time jobs and nine seasonal jobs. These jobs represent approximately \$245,000 in yearly income to tribal and community members.

### Cost of Management

Tribal and federal funding is utilized to manage the forest and woodland resources. Tribal funding is provided from timber and woodland sale receipts through management deductions. Federal funding is used to carry out contracted program responsibilities such as inventories and plans, forest development, forest protection, timber sale preparation and administration and administration of individual commercial permits.

Over the past ten years, 90% of the annual \$431,000.00 budget has been used to fund forest development. Forest development congressional add-on funds cannot be used for other program activities. This FMP outlines a shift in management emphasis from forest development to commercial timber and woodland sales. The annual budget required to implement the recommended Tribal Forestry activities contained within this plan is projected at \$675,000.00 and is broken out in Table A-1. Close coordination, planning, and action will be necessary between Tribal Forestry and the Agency, Area and Central levels of the BIA to secure initial and subsequent funding to fulfill the U.S. government's trust responsibility for forest and woodland management. The increase necessary to fund Hualapai Tribal Forestry in its shifting emphasis to timber sales may be accomplished internally within the current BIA Forestry budget or externally through additional congressional appropriations. It must be provided on an annual basis. Ultimately the Hualapai Tribe expects the BIA to provide the same financial commitment that other tribes currently receive for their timber sale programs, so that we too may initiate and continue resource management and realize needed income.

The base budget of \$675,000 does not include the funding necessary to implement the special studies section (5.124) of this plan. One study would establish a series of uneven-aged stocking/growth plots that would be monitored to assess resource response to various management objectives. In addition, these plots would be used as demonstration areas and permit visual identification of different target stands to



tribal decision makers and individual members. Funding for an already established ponderosa pine growth study would permit remeasurement and analysis on approximately 20,000 acres of saplings that have been precommercially thinned over the last 15 years (1978-92). A periodic one-time funding of \$65,600.00 would be required to initiate and update these special studies.

Table A-1. HUALAPAI TRIBAL FORESTRY FUNDING NEEDS.

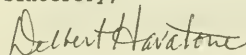
	FOREST SALE PREP. & ADMIN.	FOREST DEVELOPMENT	FOREST INVENTORY & PLAN
Salaries	\$ 302,000	\$ 86,000	\$ 112,000
Serv & Supp.	\$ 39,500	\$ 74,000	\$ 9,000
Transport.	\$ 33,500	\$ 15,000	\$ 4,000
Total	\$ 375,000	\$ 175,000	\$ 125,000
GRAND TOTAL	\$675,000		
Personnel (FTE)	8.7	5.0	3.0

The base budget for BIA fire suppression and presuppression activities requires \$475,000 per year while project fires are funded from special federal appropriations.

Finally, I would like to inform the Committee that our Hualapai Tribal Forestry Department has functioned with basically the same annual appropriations and no increase in personnel since 1984. They have fulfilled their obligations under PL101-630, Title III by producing a Forest Management plan reporting current funding and "setting forth the funding and staffing requirements to carry out ... the plan". I would hope the U.S. Government would also abide by their law and "provide for the authorization of necessary appropriations" in the amount of \$675,000.00.

Thank you for the opportunity to submit this statement.

Sincerely,



HUALAPAI TRIBAL COUNCIL  
Delbert Havatone, Chairman Hualapai Tribe

## Written Testimony of the Navajo Nation

Senate Indian Affairs Committee  
Oversight Hearing on Indian Forestry

Room 485 Russell Senate Office Building  
September 20, 1995

The Navajo Nation is pleased to submit its written testimony on Public Law (P.L.) 101-630, the National Indian Forest Resources Management Act (NIFRMA). The Navajo Nation thanks the Senate Committee on Indian Affairs, and especially Chairman John McCain, for their efforts in securing passage of NIFRMA and more recently, their efforts in trying to restore \$200 million to the FY 1996 Interior Appropriations bill for Indian programs. This written testimony will address four major areas: (1) The role of forest management planning on Indian lands - a closer look at NIFRMA, (2) Federal support for forest management planning - the Navajo Nation's experience, (3) Impositions of the Endangered Species Act on the Navajo Nation, and (4) Appropriate Indian Fish and Wildlife policies for Indian lands.

### The Role of Forest Management Planning on Indian Lands - A Closer Look at NIFRMA

The Navajo Nation understands that the forest management planning requirements of NIFRMA reflect that forest management plans are key to the Secretary of the Interior's strict trust responsibility to manage Indian forest lands through integrated resource management and multiple use, such that the plans meet the objective of Indian Nations and remain in a continuously productive state. As NIFRMA is structured, we further understand that the key aspects of the planning requirements are that:

- (1) There is a well defined federal role in forest management planning (approval, as trustee, to assure resource protection);
- (2) Forest management plans are to be developed to meet tribal goals and objectives;
- (3) Plans should be developed with full participation of, and consultation with, tribal governments and their members; and
- (4) Forest management plans embrace principles of sustained yield, multiple-use, and integrated resource management for the continuous production and protection of all forest resources.

### Federal Support For Forest Management Planning - The Navajo Nation's Experience

The Navajo Nation has contracted forest management planning from the Bureau of Indian Affairs ("BIA") under a P.L. 93-638 self-determination contract. The Navajo Nation is required to develop a forest management plan pursuant to NIFRMA and an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA). However, as the Navajo Nation proceeded with the Environmental Assessment, it became clear that, as early as 1991, an Environmental Impact Statement (EIS) was required to be prepared for the forest management plan. This helped to ensure that tribal members have the opportunity to provide input and the Navajo Nation is able to evaluate several alternatives for future management. In October 1992, the Bureau of Indian Affairs ("BIA") issued a Notice of Intent to prepare an EIS for the forest management plan.

The BIA has acknowledged, through the Central Office - Office of Trust Responsibility, that, as trustee, they are responsible to perform the EIS. Nonetheless, the BIA did not request money for the EIS. Further, the Navajo Nation did not receive federal funding for the EIS until the summer of 1994 (more than two years after it was determined that an EIS was necessary) and the amount given was insufficient to adequately complete the EIS. Due to delays in obtaining funds for the EIS, the Navajo Nation lost momentum to complete the forest management plan. Rather than having a completed plan and EIS ready for draft review in February 1994, only a draft plan was completed. Progress further deteriorated due to the lack of resources to complete the EIS and planning had to be initiated again with a new interdisciplinary team in the Fall 1994.

Some progress has been made, including completion an analysis of the measurement of the Navajo continuous forest inventory, corrections to a supporting geographic information system database, tribal approved goals for resource management, and the identification of a new set of planning alternatives. These are the result of technical assistance provided by the BIA Central Office Branch of Forest Resources Planning. However, continued technical assistance is currently in jeopardy due to BIA budget cuts and possible reductions in force which will result in further delays in completing the ten-year forest management plan. Such delays, denies the Navajo Nation access to much needed benefits. Our forests are a valuable resource for utilization, but more importantly is home to many and is of great cultural and spiritual importance to Navajo people.

### Endangered Species Act Impositions Being Placed on the Navajo Nation

The Navajo Nation is very concerned about the implementation of the Endangered Species Act (ESA) on Navajo lands. Indian lands are not federal public lands and should not be treated as such. Moreover, we are troubled that the USFWS did not conduct any government-to-government meetings with us regarding the critical habitat designation in spite of the known consequences to our proposed activities. Yet, our proposed activities, which may affect the critical habitat, are subject to consultation with the United States Fish and Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act. Currently, the Navajo Nation has at least three major right-of-way projects that will be required to undergo additional environmental analysis due to the critical habitat designation. Further, the USFWS designation ignored substantive economic development information and analysis demonstrating that the benefits to the Navajo Nation by not designating critical habitat within the Defiance Plateau/Chuska Mountain forest area greatly outweighed any benefit by designating critical habitat for the Mexican spotted owl. This demonstrated the Secretary of Interior's unwillingness to exercise his discretion in designating critical habitat pursuant to Section 4(b)(2) of the ESA.

Recently, the Federal District Court of Arizona in *Silver v. Thomas*, CIV 94-1610, PHX-CAM (D.C. ARIZ, August 24, 1995) enjoined the BIA for failure to initiate consultation with the USFWS on the expired 1983-92 Navajo 10-Year Forest Management Plan pursuant to Section 7 of the ESA. As a result, the BIA has suspended all projects occurring within the Defiance Plateau/Chuska Mountain forest area that involved any type of timber harvest (including any pre-commercial harvest) and harvest incidental to other non-forestry activities (i.e., right-of-ways for utility lines and highways). This causes a severe hardship for Navajo families requesting rights-of-ways projects. These include the development of power lines, water mains, sewage lines, roads, and other basic infrastructure projects that are vital to many Navajo communities. Moreover, the implication is that it is no longer sufficient that these projects meet project specific NEPA and ESA requirements; rather, all projects must be evaluated together in terms of their cumulative impacts to threatened and endangered species under Section 7 of the ESA.

Also, the designation of critical habitat for the Mexican spotted owl on our forest lands imposes added regulatory burdens to the Navajo Nation. We are experiencing increased compliance with the

requirements of the ESA without any say regarding how these requirements might restrict our sovereign ability to manage our resources. Additionally, these requirements are imposed without compensation in terms of funding or technical assistance to alleviate the burdens placed on our staff and financial resources. We fear that we will be the ones asked to carry the burden of conservation on behalf of those who have been less prudent since the First Nations have a history of living in harmony with the land and resources, by virtue of having taken care of Mother Earth generations before us, and by virtue of continue this stewardship in the future.

### **Appropriate Indian Fish and Wildlife Policies for Indian Lands**

As stated earlier, the USFWS determination of critical habitat for the Mexican spotted owl did not follow established federal Indian policies to:

- (1) Operate within a government-to-government relationship with Indian tribes;
- (2) Consult with affected Indian tribal governments before taking actions affecting them;
- (3) Assess the impact of agency activities on trust resources;
- (4) Assure that tribal interests are considered before activities are undertaken; and
- (5) Remove impediments and cooperate with other federal agencies in working directly with tribal governments that effect trust property or right of Indian tribes.

These policies were recently affirmed in President Clinton's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments - Memorandum for the Heads of Executive Departments and Agencies" (attached); well ahead of the USFWS designation of critical habitat on Navajo Nation lands.

Perhaps the most important facet in any federal Indian Fish and Wildlife policy is the establishment of regulatory justification for federal agencies to impose restrictions on tribal use or access to trust resources, or those off-reservation resources which are the subject of Indian treaties or Executive Order. The necessity of restricting tribal use of natural resources should be based on the following standards which require that federal agencies only impose restrictions when: (1) they are reasonable and necessary for species preservation, (2) they are the least restrictive available to achieve the desired conservation purpose, (3) they do not discriminate against Indian activities, (4) their purpose cannot be achieved solely through the regulation of non-Indian activity, and (5) voluntary tribal conservation measures are not adequate to achieve the desired conservation purpose of the restriction. It is our view that imposing restrictions without meeting these five standards is a violation of Indian rights pursuant to the Supreme Law of the Land.

### **Conclusion**

Implementation of the forest management planning requirements of the National Indian Forest Resources Management Act on the Navajo Nation has been difficult. In particular, we have experienced:

- (1) Insufficient funding to carry out federal mandates;

- (2) Delays in federal funding and/or assistance for the Environmental Impact Statement;
- (3) Increases in forest management planning requirements due to the listing of the Mexican spotted owl as a threatened species;
- (4) A lack of adherence to established federal Indian policies when designating critical habitat for the Mexican spotted owl;
- (5) Interruptions in much needed non-forestry related activities due to a Federal District Court injunction against the BIA for failure to comply with the Endangered Species Act; and
- (6) Uncertainty in continuing federal assistance due to budget cutbacks and BIA downsizing.

The Navajo Nation urges the Senate Indian Affairs Committee to conduct hearings on whether federal agencies are following established policies to maintain a government-to-government relationship, respecting tribal sovereignty, and protecting the inherent rights of Indian nations when administering federal environmental mandates such as the ESA. These hearings should also investigate the necessity of compliance with federal mandates, in an era when Indian nations lack the funds to operate day-to-day activities due to cutbacks and downsizing in the BIA program accounts.

We have attached additional information in support of our testimony. Again thank you for this opportunity.



## Presidential Documents

Title 3—

The President

Memorandum of April 29, 1994

Government-to-Government Relations With  
Native American Tribal Governments

## Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

**ATTACHMENT**

**Written Testimony of the Navajo Nation**

Senate Indian Affairs Committee  
Oversight Hearing on Indian Forestry

Room 485, Russell Senate Office Building  
September 20, 1995

Memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments". President of the United States Memorandum for the Heads of Executive Departments and Agencies.

**SUPPORTING INFORMATION**  
**Written Testimony of the Navajo Nation**

Senate Indian Affairs Committee  
 Oversight Hearing on Indian Forestry

Room 485, Russell Senate Office Building  
 September 20, 1995

**The Role of Forest Management Planning on Indian Lands -- What's in P. L. 101-630?**

- The National Indian Forest Resources Management Act (P. L. 101-630) sets forth the following with respect to forest management planning:

*... the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans... 25 U.S.C §3104 (b)(1) (emphasis added).*

*... the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives ... 25 U.S.C. §3104 (b)(2) (emphasis added).*

*... "forest management plan" means the principal document, approved by the Secretary [of the Interior], reflecting and consistent with a tribal integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe ... 25 U.S.C. §3103 (5) (emphasis added).*

**Federal Support for Forest Management Planning -- the Navajo Nation's Experience**

- The Navajo Nation, under P. L. 93-638, has contracted forest management planning and inventory responsibilities. This includes the development of forest management plans, measurement and analysis of the scientific data from the Navajo continuous forest inventory, as well as the preparation of environmental documents pursuant to NEPA.
- As a P. L. 93-638 contractor, the Navajo Nation follows Bureau of Indian Affairs Manual (BIAM) (53 BIAM Supplement 2) guidelines for forest management planning. These guidelines call for the development of a forest management plan, which with respect to NEPA, calls for the preparation of an Environmental Assessment leading to either the determination of a Finding of No Significant Impact (FONSI), or a Notice of Intent to prepare an EIS.

- In 1991, the Navajo Nation set out to develop its next ten year forest management plan for the 1993-2002 period. An interdisciplinary team was formed. Towards the end of that year, the Navajo Nation requested of the BIA that an EIS be prepared for the forest management plan to ensure that tribal members have the opportunity for input, and to ensure that the Navajo Nation has the opportunity to evaluate several alternatives for future management. In October 1992, the BIA issued a Notice of Intent to prepare an EIS for the Navajo forest management plan.
- Planning activity and public scoping meetings continued through 1992 and into 1993. A request for proposal for the Navajo EIS was released by the Navajo Nation and bids for the work averaged around \$400,000. The BIA's Central Office Division of Forestry indicated that no forestry program (including forest management inventory and planning) dollars were available for the Navajo EIS.
- In May, 1993, there was a meeting between the Navajo Nation and the Director, Office of Trust Responsibilities, regarding funding for the Navajo EIS. The Director (Mr. Patrick Hayes) indicated that since the Navajo forest management plan dealt with the programmatic planning for a trust resource, the EIS was a trustee responsibility that implied a fiscal responsibility. However, no money was readily available. Reimbursement for the Navajo Nation's expense would be sought through a special request in the FY 1995 budget.
- The BIA did not request Navajo's EIS funding in the program decreases and increases budget request for FY 1995. Further, the Navajo Nation did not appropriate monies for the EIS. Hence, no contract was awarded in 1993. However, the planning process continued with the development and analysis of planning alternatives utilizing techniques provided by the Northern Arizona University, Flagstaff, Arizona.
- In February, 1994, a draft plan was compiled by the Navajo Nation and reviewed by the BIA Central Office's Branch of Forest Resources Planning. There was no attendant EIS developed due to the fact that no funds were ever provided for this activity. Central Office review of the draft plan found it to be incomplete with respect to its use of scientific data and overall format. Most important was the lack of a completed analysis and write-up of the 1989 measurement of the Navajo continuous forest inventory. Further, BIA approval of the plan could not occur until the EIS was completed. Finally, the Interdisciplinary Team indicated that it was never comfortable with Northern Arizona University's development and analysis of alternatives.
- As a result, the forest management planning effort stalled. At this point (1994), the forest management plan was almost two years past due and all timber harvest pursuant to the 1983-92 forest management plan (which had been extended by the Navajo Nation through the end of 1993) had been completed. In July of 1994, the Navajo Forest Products Enterprise (NFPE) sawmill shut down indefinitely due to lack of available logs for milling.
- In August of 1994, the Navajo Area Director did not approve an interim timber sale (the Toh-Ni-Tsa timber sale) due to deficiencies in the environmental assessment, appraisal,

and contract. At the same time, the Navajo Area Director placed the highest priority on completing the forest management plan and Environmental Impact Statement by securing technical assistance from the Central Office Branch of Forest Resources Planning. Partial funding for the EIS was made available by the BIA (approximately \$200,000). Further, the BIA paid off nearly \$70,000 worth of outstanding obligations with Northern Arizona University and entered into an agreement for continued support for the analysis of planning alternatives conditioned on Northern Arizona University's cooperation with the BIA to make needed revisions in its decision support model. This cooperation was not obtained.

- In January 1995, the Navajo Area Director went on record (in the Area Director's report to the Winter Session, Navajo Nation Council) that the Toh-Ni-Tsa timber sale (despite improvements to the timber sale package) would not be approved until the next ten year forest management plan and EIS had been completed and approved.
- The experience of the Navajo Nation exemplifies one the key findings in the Indian forest management assessment prepared by The Indian Forest Management Assessment Team pursuant to The National Indian Forest Resources Management Act (P. L. 101-630):

*Forest management plans for reservation forests have the potential for meeting many tribal goals and priorities but a narrow definition of sustained yield management, inadequate analysis in some cases, and lack of funding and personnel make attainment of these goals difficult (An Assessment of Indian Forests & Forest Management in the United States, November 1993, Finding #9).*

For the Navajo Nation, delays in the development of an Environmental Impact Statement concurrent with the forest management plan led to an analysis of alternatives too narrow in scope (timber management) to address the diverse range of management issues being faced.

#### Endangered Species Act Impositions Being Placed on the Navajo Nation

- Effective April 15, 1993, the Mexican spotted owl was listed as a threatened species under the Endangered Species Act.
- Through its technical assistance with the revised planning effort (commencing in the summer of 1994), the BIA has proposed to satisfy requirements of the Endangered Species Act by seeking agreement with the Navajo Nation to incorporate habitat conservation planning elements such that the forest management plan can be submitted as part of an application for incidental take by The Navajo Nation pursuant to Section 10 of the ESA. In addition to the Mexican spotted owl, the habitat conservation planning elements would address 15 other listed or candidate species.
- On June 6, 1995, the USFWS, published in the *Federal Register* its Final Rule: Determination of Critical Habitat for the Mexican Spotted Owl. The critical habitat designation became effective July 6, 1995. Five critical habitat units, representing over



half of the 596,724 acres of the Navajo Nation's Defiance Plateau/Chuska Mountain forest area, were designated in the final ruling, despite opposition by the Navajo Nation and the BIA.

- The USFWS designation of critical habitat on Navajo Nation lands ignored substantive economic information and analysis demonstrating that the benefits to the Navajo Nation from not designating critical habitat within the Defiance Plateau/Chuska Mountain forest area exceeded any benefit to the Mexican spotted owl from doing so. This demonstrated the Secretary of the Interior's unwillingness to exercise his discretion in designating critical habitat pursuant to Section 4(b)(2) of the ESA.
- The designation of critical habitat for the Mexican spotted owl on Navajo Nation lands was unnecessary. There was no existing threat to Mexican spotted owl habitat from even-aged timber harvest within the Defiance Plateau/Chuska Mountain forest area because the BIA's Navajo Area Office would not approve any timber sales until the next forest management plan was completed. Further, completion of the next forest management plan will incorporate conservation measures for the Mexican spotted owl pursuant to incidental take provisions in Section 10 of the ESA. Finally, the Navajo Nation's most recent timber sale (1993) incorporated mitigation to protect Mexican spotted owl habitat, including modifications to even-aged management prescriptions; even though no Mexican spotted owls were located proximate to the sale area. Similarly, the Navajo Nation's most recently proposed timber sale (which was never approved by the BIA due to the lack of a forest management plan) underwent formal consultation with the USFWS pursuant to Section 7 of the ESA. All this points to the Navajo Nation's and BIA's resolve to protect the Mexican spotted owl.
- In spite of the BIA's position not to approve any timber sales and related road activity until the next forest management plan has been completed (with full compliance with the National Environmental Policy Act and the Endangered Species Act), and the BIA's record that no timber sales have been approved since the Mexican spotted owl listing became effective (April 15, 1993), the BIA's Navajo Area Office was enjoined on August 24, 1995, against all timber harvest activities by the Arizona Federal District Court (CIV 94-1610 PHX-CAM (D. Ariz.)) due to the lack of programmatic consultation on the expired 1983-92 10 Year Forest Management Plan, Navajo Indian Reservation under Section 7 of the ESA.
- Compliance with the Court Order will involve the preparation of a biological assessment. The purpose of the biological assessment will be to establish a baseline for determining impacts to the Mexican spotted owl and to make a determination of effect for continuing interim and incidental timber harvest activities until the next forest management plan is completed. Since most natural resource functions are performed by the Navajo Nation under P. L. 93-638 Indian self-determination contracts, the burden for this additional analysis will be placed on the Navajo Nation.

### Appropriate Indian Fish and Wildlife Policies for Indian Lands

- The USFWS failed to maintain a government-to-government relationship with the Navajo Nation in proposing and actually designating critical habitat for the Mexican spotted owl. In particular, the USFWS made repeated requests for information from the Navajo Nation without first holding formal briefings with either the Executive or Legislative branches of government. In addition, despite clarifications and analysis voluntarily provided by the Navajo Nation, the information did not seem to be used for its intended purpose (an analysis of whether to exclude specific critical habitat designations based on the benefits of non-designation). Finally, the Navajo Nation was never briefed of the USFWS pending action to include Navajo Nation lands in its final rule, in spite of strong opposition from the Navajo Nation; even when specifically requested to do so by BIA.
- In June, 1994, the Assistant Secretary -- Indian Affairs (Ms. Ada Deer) recommended a suitable Indian Fish and Wildlife policy (see appendix) for consideration by the USFWS as appropriate policy to meet Secretarial Order No. 3175, "Departmental Responsibilities for Indian Trust Resources" (see appendix). The Assistant Secretary -- Indian Affairs policy recommended eight policy principles. The eight principles firmly establish the federal government's responsibilities toward Indian tribes and recognize the unique status of Indian lands, the importance of the federal Indian government-to-government relationship, and the conservation necessity of restricting tribal use of natural resources.
- However, the USFWS did not incorporate many aspects of these recommendations in its own June 1994 "Native American Policy". One important discrepancy is the regulatory justification for mandated requirements imposed by the USFWS on either the BIA (as trustee) or the Navajo Nation. Essentially, the USFWS refused to accept the conservation necessity of restricting tribal use of natural resources; which requires that restrictions only be imposed when;
  - they are reasonable and necessary for species preservation,
  - they are the least restrictive available to achieve the desired conservation purpose,
  - they do not discriminate against Indian activities,
  - their purpose cannot be achieved solely through the regulation of non-Indian activity, and
  - voluntary tribal conservation measures are not adequate to achieve the desired conservation purpose of the restriction.

These five conservation standards are necessary to justify federal agency imposed restrictions on tribal use of natural resources; either held in trust, or those off-reservation resources which are the subject of Indian treaties or Executive Order. Otherwise, the federal agencies are violating Indian rights pursuant to the "supreme law of the land" (i.e., United States Constitution).

- The Navajo Nation is hopeful that the United States Department of Justice will heed its own "Department of Justice Policy on Indian Sovereignty and Government-To-Government Relations With Indian Tribes" (see appendix) when advising the BIA on how to proceed with meeting the Court Order enjoining all timber harvest activities by the Navajo Nation due to the BIA's lack of programmatic consultation on the expired 1983-92 10 Year Forest Management Plan, Navajo Indian Reservation under Section 7 of the ESA (CIV 94-1610 PHX-CAM (D. Ariz.)). Specifically, the USFWS and BIA needs to seek concurrence from the Navajo Nation on specific steps taken to comply with the Court's order; as well as inform the Navajo Nation of potential consequences and forthcoming restrictions as a result of compliance. This relationship needs to be established before the BIA's Navajo Area Office takes specific action in compliance with the Court Order.

APPENDIX

**SUPPORTING INFORMATION**  
**Written Testimony of the Navajo Nation**

Senate Indian Affairs Committee  
Oversight Hearing on Indian Forestry

Room 485, Russell Senate Office Building  
September 20, 1995

- 1) United States Department of the Interior Memorandum from the Assistant Secretary - Indian Affairs to the Assistant Secretary for Fish and Wildlife and Parks. Subject: Indian Fish and Wildlife Policy. June 23, 1994.
- 2) United States Department of the Interior. Departmental Responsibilities for Indian Trust Resources. Secretarial Order No. 3175. November 8, 1993.
- 3) Office of the Attorney General. Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations With Indian Tribes. June 1, 1995.



## United States Department of the Interior

 OFFICE OF THE SECRETARY  
 WASHINGTON, D.C. 20240


JUN 23 1994

## Memorandum

To: Assistant Secretary for Fish and Wildlife and Parks

 From: ~~For~~ Ada E. Deer *Faith Russell*  
 Assistant Secretary - Indian Affairs

Subject: Indian Fish and Wildlife Policy

In recent months, personnel of this office and the Bureau of Indian Affairs have been requested to provide policy guidance for addressing the interests and concerns of tribal governments in carrying out a number of agency programs, activities and initiatives. In response to these requests, we have assisted in efforts to resauthorize the Endangered Species Act, develop a Recreational Fisheries Stewardship Initiative, and establish a Native American Policy for the U.S. Fish and Wildlife Service.

On March 18, a draft Indian Fish and Wildlife Policy developed by the Bureau and this office was forwarded for review and legal analysis. The Associate Solicitor, Division of Indian Affairs has recommended several changes to bring the policy in line with current Federal Indian law jurisprudence. We are pleased to provide the following revised policy principles and implementation guidelines for your consideration and use in future policy development and program related efforts.

Please let us know if we can be of further assistance.

POLICY PRINCIPLES(1) Tribal Sovereignty and Jurisdiction.

- Tribes are recognized as governmental sovereigns in the Commerce Clause of the United States Constitution (Art. 1, Sec. 8), and have been referred to as quasi-sovereign domestic dependent nations (nations within a nation) by the courts.
- Tribes have the inherent power to make and enforce laws and to administer justice. Under principles of Federal Indian law, this power may extend to civil and criminal jurisdiction over individuals and corporations.

-2-

- Among the attributes of tribal sovereignty is the power to manage and control water and land resources, associated natural resources, and environmental protection. Tribal sovereignty also includes the power to regulate member and non-member hunting, fishing and gathering on-reservation, and related member uses in certain off-reservation settings. Federal recognition of these powers, whether arising from statute, executive order, or treaty, is the supreme law of the land.

- Despite their status as sovereigns, Indian tribes are subject to the plenary power of the Congress.

## (2) The Government-to-Government Relationship / Consultation.

- There is a unique and distinctive political relationship existing between the United States and Indian tribes, as defined by treaties, statutes, court decisions and the United States Constitution, which differentiates tribes from other customers and constituencies, and which extends to all Federal agencies.

- The government-to-government relationship encompasses a renunciation of the old forced termination policy.

- The President of the United States, in an Executive Memorandum of April 29, 1994, charged all executive departments and agencies with the responsibility of ensuring that they operate in accordance with principles mandated by the nature of this government-to-government relationship.

- The government-to-government relationship requires working relationships and partnerships with tribal infrastructures and resource management authorities, including the sharing of technical staffs and information, to address issues of mutual interest and common concern, recognizing, however, that the release of tribal proprietary or consultative information may be restricted.

- Recognizing that tribes are not just another user-group or interest group requiring attention, the relationship requires going beyond simply discussing, exchanging views, or seeking tribal comment on internal policies and decisions which may affect the rights and status of tribal governments, the input from which may or may not be incorporated into decisionmaking. Direct and continuous tribal participation is required in planning, consensus seeking, and decision making processes involving line officers.

- The government-to-government relationship requires that Federal statutes and programs be administered in a manner that does not unilaterally interfere with tribal rights, and that agency missions be interpreted in a manner consistent with Federal Indian law and policy. Where an irreconcilable conflict arises, tribal rights will generally take precedence.



- Tribes, as sovereigns, are not subject to State jurisdiction, are not subordinate to State Governments, and should not be dealt with through Federal/State processes and arrangements designed to serve the interests of the general public. With respect to those Federal statutes that are inapplicable to tribes as sovereigns, tribal governments must be regarded as separate from the general public for the purpose of conducting agency review and comment gathering processes and related procedures.

- The government-to-government relationship supports issuance of an Indian policy and directive establishing objectives and line and staff duties and responsibilities for ensuring that agency policies, programs, and operations affecting Indians are appropriately and consistently applied and administered at all levels.

### (3) Indian Self-Determination / Self-Sufficiency / Self Governance Policies.

- The policies under this heading call for rejection of Federal paternalism and tribal dependency on Federal programs and management in favor of empowering tribes and supporting tribal missions and objectives in assuming regulatory and program management roles and responsibilities through contracting and other mechanisms.

- The policies under this heading call for promoting the development of reservation economies and sustainable Indian lands.

### (4) Trust and Rights Protection Responsibilities.

- The trust responsibility relates to the fiduciary relationship and the obligations and legal responsibilities of the United States, inherent in and arising from treaties, executive orders, statutes, and agreements between Indian tribes and the Federal Government.

- Where they are determined to exist, Indian treaty rights to fish, hunt and gather resources in off-reservation settings constitute property rights or encumbrances on land not reserved to State or local governments and, in certain circumstances, to State lands. Federal duties include harvest sharing oversight, achieving moderate standards of living, and assuring that the exercise of associated rights remains meaningful.

- Indian property rights cannot be subordinated to other interests of the Department absent overriding legal authority to do so, since the Federal Government is legally bound to protect the trust assets of Indian tribes. Moreover, in cases where inaction may cause the loss of a property right, the Secretary must take affirmative action to enforce that right and preserve Indian property.

-4-

- Primary responsibility for carrying out trust and rights protection responsibilities on tribal lands and in treaty ceded territory rests with the Bureau of Indian Affairs, but all Federal agencies share responsibility when implementing laws that may affect Indian resources.

- The trust responsibility may involve the following activities: (1) protecting and managing tribal fish, wildlife and gathering resources, and associated tribal water and land resource assets and rights, to the highest degree of fiduciary standards; (2) absent a clear expression of Congressional intent to the contrary, administering Federal fish and wildlife conservation laws in a manner consistent with the United States' obligation to honor and protect the treaty, executive order, statutory, and other reserved rights of Indian tribes; and (3) interpreting Federal statutes and regulations affecting tribal fish and wildlife resources in accordance with the trust responsibility.

- Tribal fish and wildlife resources and associated water and land resource assets and rights are reserved solely for the use of tribes and their members, not for a public purpose or to benefit non-Indian communities.

- Trust responsibility fulfillment includes protecting and managing treaty-ceded and "usual and accustomed" areas, and associated Federal lands and habitats which support the resources upon which the meaningful exercise of tribal hunting and fishing rights depend, and administering Federal projects in a manner which prevents the diminishment of associated fish and wildlife resources, and the tribal share in them. It further implies protecting tribes' property rights, including the rights of future generations, to access "usual and accustomed" grounds and stations, regardless of land ownership status, for the purpose of exercising hunting, fishing, and gathering rights.

##### (5) The Unique Character and Special Status of Indian Lands.

- Indian lands are not public lands or part of the public domain, and are not subject to the public land laws. The purposes for which Indian reservations were created differ from the purposes for which other national land bases and reserves were created. Indian reservations were created to provide lands where tribes could become economically self-sufficient by making the land and resources productive for Indian people. The purpose of most Federal land bases and reserves is to protect their natural resources. These different purposes demand that different rules, practices, and policies be applied to govern activities on Indian lands versus other Federal lands.

- Under Federal law, Indian lands are "private trust assets" which were set aside for exclusive Indian use, not general public benefit, pursuant to treaties, statutes, and executive orders.

- While the naked legal title to Indian lands is held by the United States, tribes retain most of the benefits of ownership as do owners of fee simple property. Such property, however, cannot currently be alienated or encumbered without the Federal Government's approval.

- Indian lands are the principal resource available for the economic and social advancement of Indian people as beneficial owners, to be managed in accordance with tribal goals and objectives, within the framework of applicable law.

#### (6) The Unique Character of Indian Fish, Wildlife and Natural Resources.

- As a result of reservations in treaties and other legal instruments, some tribes have retained rights to hunt, fish, trap, and gather Indian fish and wildlife resources both on-reservation and in off-reservation settings, for subsistence, ceremonial, and commercial purposes. In some cases, the treaty-reserved power to access Indian fish and wildlife resources in off-reservation settings actually constitutes a property right or encumbrance on lands not owned by the tribe, a power no State or local government enjoys.

- Certain fish, wildlife and plant species, including some that are listed as threatened or endangered, possess cultural, religious, subsistence, and economic value to particular Indian tribes.

- The President of the United States, in an Executive Memorandum of April 29, 1994, directed all executive departments and agencies to work cooperatively with tribal governments and accommodate Native American religious practices to the fullest extent under the law.

#### (7) The Status of Tribes as Resource Co-Managers.

- Along with Federal and State Governments, Indian tribes are co-managers of many fish and wildlife resources, with shared responsibilities for such resources as a function of treaties, statutes, judicial decrees and other legal instruments.

- As co-managers, tribes have a need to develop and maintain partnerships and constructive working relationships with other resource management jurisdictions and authorities.

(8) Restrictions on Tribal Use of Fish and Wildlife Resources.

- A "reasonable and necessary" principle must be applied when agencies consider actions which would result in restrictions on the use or development of tribal fish and wildlife resources or on the exercise of tribal hunting, fishing, or gathering rights, or which would result in a conservation burden being imposed on a tribe. Consistent with court rulings pertaining to the exercise of treaty fishing rights, any such restrictions may be applied only when:

(a) They are reasonable and necessary for species preservation;

(b) They are the least restrictive available to achieve the required conservation purpose;

(c) They do not discriminate against Indian activities, either on their face or as applied;

(d) When their purpose cannot be achieved solely through the regulation of non-Indian activity; and

(e) When voluntary tribal conservation measures are not adequate to achieve the conservation purpose.

- If it is necessary to impose restrictions, this shall not be interpreted as an abrogation of treaty rights. Clear Congressional intent is required before a later-enacted statute may be construed to abrogate Indian treaty, executive order, or other reserved powers or rights.

POLICY IMPLEMENTATION GUIDELINES

- In recognition of the need to protect tribal rights and to fulfill the trust responsibility owed to Indian tribes in carrying out Federal agency missions, programs, and actions, and of tribal roles and responsibilities as governments and resource managers, the Federal Government must involve tribes to the maximum extent possible in all decisionmaking processes which may affect the status of tribal fish and wildlife resources and the exercise of associated rights, and in all planning and implementation phases of agency operations, including those inter-agency, multi-species, and ecosystem-oriented programs undertaken by the Federal Government for the public good. This policy was formalized in Secretarial Order Number 3175, "Departmental Responsibilities for Indian Trust Resources," of November 8, 1993, and in the President's Executive Memorandum of April 29, 1994, which charged all executive departments and agencies with the responsibility of ensuring that they operate in accordance with principles mandated by the nature of the government-to-government relationship.

-7-

- Departmental bureaus and offices shall, to the maximum extent provided by law, decline to take or approve any action by other parties that could adversely affect the well-being of off-reservation trust resources or the meaningful exercise of associated off-reservation hunting, fishing, and gathering rights, unless all adverse consequences of such actions on trust resources and rights are fully mitigated in a timely manner. When this cannot be done, Departmental bureaus and offices shall mitigate such actions to the extent legally authorized and acceptable to the affected tribe(s) through agreements entered into by the relevant parties providing for mitigation that constitutes fair consideration for any associated adverse effects of the action on trust resources or rights.

- In implementing laws or court orders other than those protecting trust resources and rights, some of which may conflict with related protections, Departmental bureaus and offices shall select approaches having no adverse effects, or the least adverse effects, on trust resources and rights.

- In carrying out these directives, Departmental bureaus and offices are encouraged to consult with the Assistant Secretary - Indian Affairs, the Solicitor's Office, and the Bureau of Indian Affairs in order to clearly determine the Federal Government's fiduciary duty and the approaches that might be taken to meet this duty.



OFFICE OF THE SECRETARY  
Washington, D C 20240

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AMERICA (REDACTED) (S)  
CAREERS (REDACTED) (S)  
RESEARCH (REDACTED) (S)  
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Subject: Departmental Responsibilities for Indian Trust Resources

This Order is for internal management guidance only, and shall not be construed to grant or vest any right to any party in respect to any Federal action not otherwise granted or vested by existing law or regulations.

Sec. 3 Responsibility. The heads of bureaus and offices are responsible for being aware of the impact of their plans, projects, programs or activities on Indian trust resources. Bureaus and offices when engaged in the planning of any proposed project or action will ensure that any anticipated effects on Indian trust resources are explicitly addressed in the planning, decision and operational documents; i.e., Environmental Assessments; Environmental Impact Statements, Management Plans, etc., that are prepared for the project. These documents should clearly state the rationale for the recommended decision and explain how the decision will be consistent with the Department's trust responsibilities. Bureaus and offices are required to consult with the recognized tribal government with jurisdiction over the trust property that the proposal may affect, the appropriate office of the Bureau of Indian Affairs, and the Office of the Solicitor (for legal assistance) if their evaluation reveals any impacts on Indian trust resources. All consultations with tribal governments are to be open and candid so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources.

The heads of the Department's bureaus and offices will prepare and publish procedures and directives prior to the expiration of this Order to ensure that their respective units are fully aware of this Order and that they are in compliance with the intent of the Order. Prior to final issuance, the Office of American Indian Trust will review and comment on these procedures before their approval by the Assistant Secretary - Indian Affairs.

Sec. 4 Effective Date. This Order is effective immediately. Its provisions will remain in effect until October 1, 1994, or until it is amended, superseded, or revoked, whichever occurs first.

Secretary of the Interior



**Office of the Attorney General**  
**Washington, D. C. 20530**

**DEPARTMENT OF JUSTICE POLICY ON INDIAN SOVEREIGNTY  
 AND GOVERNMENT-TO-GOVERNMENT RELATIONS WITH INDIAN TRIBES**

**PURPOSE:** To reaffirm the Department's recognition of the sovereign status of federally recognized Indian tribes as domestic dependent nations and to reaffirm adherence to the principles of government-to-government relations; to inform Department personnel, other federal agencies, federally recognized Indian tribes, and the public of the Department's working relationships with federally recognized Indian tribes; and to guide the Department in its work in the field of Indian affairs.

**I. INTRODUCTION**

From its earliest days, the United States has recognized the sovereign status of Indian tribes as "domestic dependent nations." Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). Our Constitution recognizes Indian sovereignty by classing Indian treaties among the "supreme Law of the land," and establishes Indian affairs as a unique area of federal concern. In early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the federal trust responsibility in our government-to-government relations with Indian tribes. These principles continue to guide our national policy towards Indian tribes.

**A. THE EXECUTIVE MEMORANDUM ON GOVERNMENT-TO-GOVERNMENT  
 RELATIONS BETWEEN THE UNITED STATES AND INDIAN TRIBES**

On April 29, 1994, at a historic meeting with the heads of tribal governments, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments" and issued a directive to all executive departments and agencies of the Federal Government that:

As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

President Clinton's directive requires that in all activities relating to or affecting the government or treaty rights of Indian tribes, the executive branch shall:

- 1) operate within a government-to-government relationship with federally recognized Indian tribes;
- 2) consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions.

that affect federally recognized Indian tribes;

3) assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken;

4) remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes; and

5) work cooperatively with other agencies to accomplish these goals established by the President.

The Department of Justice is reviewing programs and procedures to ensure that we adhere to principles of respect for Indian tribal governments and honor our Nation's trust responsibility to Indian tribes. Within the Department, the Office of Tribal Justice has been formed to coordinate policy towards Indian tribes both within the Department and with other agencies of the Federal Government, and to assist Indian tribes as domestic dependent nations within the federal system.

#### **B. FEDERAL INDIAN SELF-DETERMINATION POLICY**

President Clinton's executive memorandum builds on the firmly established federal policy of self-determination for Indian tribes. Working together with Congress, previous Presidents affirmed the fundamental policy of federal respect for tribal self-government. President Johnson recognized "the right of the first Americans . . . to freedom of choice and self-determination." President Nixon strongly encouraged "self-determination" among the Indian people. President Reagan pledged "to pursue the policy of self-government" for Indian tribes and reaffirmed "the government-to-government basis" for dealing with Indian tribes. President Bush recognized that the Federal Government's "efforts to increase tribal self-governance have brought a renewed sense of pride and empowerment to this country's native peoples."

#### **II. PRINCIPLES OF INDIAN SOVEREIGNTY AND THE TRUST RESPONSIBILITY**

Though generalizations are difficult, a few basic principles provide important guidance in the field of Indian affairs: 1) the Constitution vests Congress with plenary power over Indian affairs; 2) Indian tribes retain important sovereign powers over "their members and their territory," subject to the plenary power of Congress; and 3) the United States has a trust responsibility to Indian tribes, which guides and limits the Federal Government in dealings with Indian tribes. Thus, federal and tribal law generally have primacy over Indian affairs in Indian country, except where Congress has provided otherwise.

### III. DEPARTMENT OF JUSTICE RECOGNITION OF INDIAN SOVEREIGNTY AND THE FEDERAL TRUST RESPONSIBILITY

The Department resolves that the following principles will guide its interactions with the Indian tribes.

#### A. THE SOVEREIGNTY OF INDIAN TRIBES

The Department recognizes that Indian tribes as domestic dependent nations retain sovereign powers, except as divested by the United States, and further recognizes that the United States has the authority to restore federal recognition of Indian sovereignty in order to strengthen tribal self-governance.

The Department shall be guided by principles of respect for Indian tribes and their sovereign authority and the United States' trust responsibility in the many ways in which the Department takes action on matters affecting Indian tribes. For example, the Department reviews proposed legislation, administers funds that are available to tribes to build their capacity to address crime and crime-related problems in Indian country, and in conjunction with the Bureau of Indian Affairs and tribal police, provides essential law enforcement in Indian country. The Department represents the United States, in coordination with other federal agencies, in litigation brought for the benefit of Indian tribes and individuals, as well as in litigation by Indian tribes or individuals against the United States or its agencies. In litigation as in other matters, the Department may take actions and positions affecting Indian tribes with which one or more tribes may disagree. In all situations, the Department will carry out its responsibilities consistent with the law and this policy statement.

#### B. GOVERNMENT-TO-GOVERNMENT RELATIONSHIPS WITH INDIAN TRIBES

In accord with the status of Indian tribes as domestic dependent nations, the Department is committed to operating on the basis of government-to-government relations with Indian tribes.

Consistent with federal law and other Departmental duties, the Department will consult with tribal leaders in its decisions that relate to or affect the sovereignty, rights, resources or lands of Indian tribes. Each component will conduct such consultation in light of its mission. In addition, the Department has initiated national and regional listening conferences and has created the Office of Tribal Justice to improve communications with Indian tribes. In the Offices of the United States Attorneys with substantial areas of Indian country within their purview, the Department encourages designation of Assistant U.S. Attorneys to serve as tribal liaisons.

In order to fulfill its mission, the Department of Justice endeavors to forge strong partnerships between the Indian tribal governments and the Department. These partnerships will enable the Department to better serve the needs of Indian tribes, Indian people, and the public at large.

#### C. SELF-DETERMINATION AND SELF-GOVERNANCE

The Department is committed to strengthening and assisting Indian tribal governments in their development and to promoting Indian self-governance. Consistent with federal law and Departmental responsibilities, the Department will consult with tribal governments concerning law enforcement priorities in Indian country, support duly recognized tribal governments, defend the lawful exercise of tribal governmental powers in coordination with the Department of the Interior and other federal agencies, investigate government corruption when necessary, and support and assist Indian tribes in the development of their law enforcement systems, tribal courts, and traditional justice systems.

#### D. TRUST RESPONSIBILITY

The Department acknowledges the federal trust responsibility arising from Indian treaties, statutes, executive orders, and the historical relations between the United States and Indian tribes. In a broad sense, the trust responsibility relates to the United States' unique legal and political relationship with Indian tribes. Congress, with plenary power over Indian affairs, plays a primary role in defining the trust responsibility, and Congress recently declared that the trust responsibility "includes the protection of the sovereignty of each tribal government." 25 U.S.C. § 3601.

The term "trust responsibility" is also used in a narrower sense to define the precise legal duties of the United States in managing property and resources of Indian tribes and, at times, of individual Indians.

The trust responsibility, in both senses, will guide the Department in litigation, enforcement, policymaking and proposals for legislation affecting Indian country, when appropriate to the circumstances. As used in its narrower sense, the federal trust responsibility may be justiciable in some circumstances, while in its broader sense the definition and implementation of the trust responsibility is committed to Congress and the Executive Branch.

#### E. PROTECTION OF CIVIL RIGHTS

Federal law prohibits discrimination based on race or national origin by the federal, state and local governments, or individuals against American Indians in such areas as voting,



education, housing, credit, public accommodations and facilities, employment, and in certain federally funded programs and facilities. Various federal criminal civil rights statutes also preserve personal liberties and safety. The existence of the federal trust responsibility towards Indian tribes does not diminish the obligation of state and local governments to respect the civil rights of Indian people.

Through the Indian Civil Rights Act, Congress selectively has derived essential civil rights protections from the Bill of Rights and applied them to Indian tribes. 25 U.S.C. § 1301. The Indian Civil Rights Act is to be interpreted with respect for Indian sovereignty. The primary responsibility for enforcement of the Act is invested in the tribal courts and other tribal fora. In the criminal law context, federal courts have authority to decide habeas corpus petitions after tribal remedies are exhausted.

The Department of Justice is fully committed to safeguarding the constitutional and statutory rights of American Indians, as well as all other Americans.

#### F. PROTECTION OF TRIBAL RELIGION AND CULTURE

The mandate to protect religious liberty is deeply rooted in this Nation's constitutional heritage. The Department seeks to ensure that American Indians are protected in the observance of their faiths. Decisions regarding the activities of the Department that have the potential to substantially interfere with the exercise of Indian religions will be guided by the First Amendment of the United States Constitution, as well as by statutes which protect the exercise of religion such as the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act.

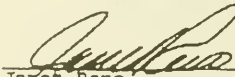
The Department also recognizes the significant federal interest in aiding tribes in the preservation of their tribal customs and traditions. In performing its duties in Indian country, the Department will respect and seek to preserve tribal cultures.

#### IV. DIRECTIVE TO ALL COMPONENTS OF THE DEPARTMENT OF JUSTICE

The principles set out here must be interpreted by each component of the Department of Justice in light of its respective mission. Therefore, each component head shall make all reasonable efforts to ensure that the component's activities are consistent with the above sovereignty and trust principles. The component heads shall circulate this policy to all attorneys in the Department to inform them of their responsibilities. Where the activities and internal procedures of the components can be reformed to ensure greater consistency with this Policy, the component head shall undertake to do so. If tensions arise between these principles and other principles which guide the component in carrying out its mission, components will develop, as necessary, a mechanism for resolving such tensions to ensure that tribal interests are given due consideration. Finally, component heads will appoint a contact person to work with the Office of Tribal Justice in addressing Indian issues within the component.

#### V. DISCLAIMER

This policy is intended only to improve the internal management of the Department and is not intended to create any right enforceable in any cause of action by any party against the United States, its agencies, officers, or any person.

  
Janet Reno  
Attorney General

Date: June 1, 1995



**Nisqually Indian Tribe**  
**4820 She-Nah-Num Drive S.E.**  
**Olympia, Washington 98513**  
**Phone: (206) 456-5221**

The following statement is submitted for the record of the Senate Indian Affairs Committee oversight hearing scheduled for September 20, 1995. The subject is the implementation of the *National Indian Forest Resources Management Act (P.L. 101-630, Title III) (NIFRMA)*.

## I. INTRODUCTION

The Nisqually Indian Reservation is situated in west-central Washington State. It lies west of the Cascade Mountain Range and approximately nine miles east of Olympia, Washington, in Thurston County and 25 miles southeast of Tacoma, Washington, in Pierce County. Since time immemorial, the Nisqually Tribe has made its home in the timberlands and prairies within the Nisqually River Basin, encompassing 2.3 million acres between Mt. Rainier and Puget Sound in Washington State. The Nisqually Reservation is approximately 5,000 acres and is located on the Nisqually River. That portion of the Reservation located north and east of the Nisqually River (3,300 acres) is under the control of the Fort Lewis military base. The remainder of the reservation consists of 1,700 acres and is within Township 18 North, Range 1 East. In 1974 the Nisqually National Wildlife Refuge was established to protect the Nisqually River and its diverse timber, fish, and wildlife habitats.

The Forest Inventory Report prepared for the Nisqually Reservation describes twelve forest types on the reservation. Initially, only the most valuable stands were logged, causing pioneer hardwoods such as alder to replace commercial softwoods such as Douglas fir. Also, stands that were clearcut were not properly replanted and managed, causing them to become stocked with brush instead of commercially valuable timber. It

takes expertly planned and implemented forest management activities to generate viable commercial forest lands.

Forest management activities are considered a long-term investment requiring significant capital investment. Intensive forest management is required to ensure a fair rate of return on the initial investment. For example, suppose a forest with a site index of 105 is planted to Douglas Fir at a cost of \$540 per acre. A release treatment is performed at age 3, and a commercial thinning at age 37 resulting in a revenue at age 50. Projections indicate that \$6,142.60 per acre is earned above the present cost of the investments, even with inflation and a high rate of interest. The Nisqually Reservation has some of the best timber growing sites in the world, which makes it prudent to put poorly managed sites back into timber production.

Primary benefits from proper forest management include making the land more valuable by stocking it with a commercial forest. It also replaces dense patches of brush with trees that are better suited for recreation.

Forestry also generates seasonal and full-time employment opportunities for tribal members. However, because of the small acreage and the variable condition of trust timber stands, the amount of annual forestry work is variable.

Manipulation of the forests in the Nisqually watershed region also affects the amounts and quality of water that appear in the streams. If properly managed, this helps maintain a quality water supply for the two tribal fish hatcheries. However, if mismanaged, it can destroy the resource.

Managed harvesting of timber on the reservation results in a diversity of successional plant stages. These stages are important to wildlife species, as the amount of food created for wildlife increases after timber harvesting. Some wildlife species populations also increase as a result of proper land and timber management.

The economic evaluation of reservation timber is presently \$9 million dollars. This does not include added economic value of jobs in harvesting, or processing, nor direct expenditures doing management prescriptions.

## II. THE IMPORTANCE OF THE NISQUALLY TRIBE HAVING ITS OWN FOREST MANAGEMENT PROGRAM

Prudent management of the forest resources of the Nisqually reservation is an important part of maintaining the ecological balance of the Nisqually River watershed, particularly in the protection of water quality and fish habitat in downstream areas, including the Nisqually delta and estuary. Maintaining the river's quality without proper land management is virtually impossible.

A forest management plan is currently being prepared, and is nearing completion. This plan describes silvicultural options designed to increase timber resource value, protect wildlife populations and fish habitats, and improve water quality in the region. These options cannot be implemented without professionally directed forest management.

Jobs made available through proper forest management include jobs in site preparation, seedling plantings, release treatment operations, pre-commercial thinning, commercial thinning, harvesting, and transportation. Additional jobs are also created in the areas of environmental restoration, forest practices, conservation, and multiple use management.

## III. WHAT ADEQUATE FUNDING FOR THE NIFRMA WILL DO

Adequate funding for the NIFRMA will give the Nisqually Tribe the ability to:

- a. Develop a plan that maximizes reservation forest resources for timber, fish, and wildlife production.
- b. Manage resources to enhance tribe's ability to contribute to both the environment and local economy.
- c. Provide additional jobs in west central Washington State.

d. Continue the process of making the Nisqually Tribe less economically dependent on the Bureau of Indian Affairs.

#### IV. CONCLUSION

Funding the NIFRMA will provide environmental protection to seventeen hundred acres of central western Washington State, and jobs for Nisqually people. Employment opportunities, forest and fisheries management, and recreation and wildlife will be improved. On the other hand, failure to fund the Act will cause reductions in existing programs, and potentially cause long-term environmental and economic damage to the region. Not funding this Act also will undermine the foundation for tribal self determination, as the economic independence of the Nisqually Tribe is no stronger than what its natural resource base will support.





## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

DEC 13 1995

Honorable John McCain  
Chairman  
Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your September 25 letter in which you submitted questions in follow-up to the September 20 Oversight Hearing before your Committee on the Implementation of Title III of Public Law 101-630, the "National Indian Forest Resources Management Act".

The information is enclosed. For purposes of clarity, the questions are listed followed by the responses.

We hope this information is helpful. If we can provide you with additional information, please contact us.

Sincerely,

Ada E. Deer  
Assistant Secretary - Indian Affairs

Enclosure

**Question 1.** What type of technical assistance role in forestry does BIA anticipate it will have given the proposed budget reductions for FY 1996? What areas would be most effected by these reductions?

**Answer:** The proposed residual capability at the Area Offices will be primarily for trust responsibility oversight with a limited technical assistance role. The Central Office functions will be primarily procedural guidance, policy, and budget with limited technical guidance provided through oversight assistance to Area Offices. The Central Office will continue to provide forest inventory data processing and analysis assistance to the extent possible.

**Question 2.** The General Accounting Office reports that approximately 36% of tribes, about 16 of 44, with over 10,000 acres of significant forest resources and 49% of tribes, or 26 of 53, with 10,000 acres or less of forest resources do not have a current forest management plan. Only six tribes have completed integrated resource management plans since passage of the Act. Most tribes still do not have an effective method of monitoring the management of their timber resources. How does the Agency account for the well-documented lack of progress in developing and monitoring Indian forest management plans?

**Answer:** Due to a limited budget for gathering the necessary Continuous Forest Inventory (CFI) data, our capability as well as the tribe's has remained static or has decreased slightly. The CFI, the cornerstone of forest management planning, is expensive to collect, maintain and support. Also, the overall development of management plans is expensive and costs are continuing to increase. For every management plan completed, one or two current plans expire. Unfunded mandates have contributed extensively to preventing many management plans from being completed in a timely manner. Monitoring of forest lands is tied to the CFI as well as other resource measurement strategies; all of which are underfunded. Overall, the BIA and tribes are losing ground in this arena.

**Question 3.** What steps has the Agency taken to eliminate the backlog in reforestation and how long will it take you to eliminate this backlog?

**Answer:** Forest development includes all activities of reforestation and timber stand improvement necessary to properly manage the commercial Indian forest for a sustained yield of desired forest products. A special forest development program was established and funded in 1977 to eliminate a backlog of deficient Indian commercial forest acres that required some type of silvicultural treatment to increase growth and yield to desired capacity. A total of 1,006,705 treatable acres were identified.

In April, 1989, the General Accounting Office (GAO) reviewed the BIA forestry program. The GAO found that the 1977 backlog of forest development requirements was imprecise and excluded many acres requiring program activities.

In response to the 1991 GAO report, a new forest development inventory was conducted and identified 1,738,000 acres in need of forest development activities, at a total estimated cost of \$226,693,000. For every year these lands remain under-productive, millions of dollars in needed income are lost by the tribes.

The Bureau of Indian Affairs' (BIA) Division of Forestry continues efforts to secure adequate funding through the budget process for forest development activities on Indian lands. Title 25 CFR 163.12(a) states that timber sales shall provide for regeneration within two years using funds from the timber sale itself. Only if regeneration through these efforts has failed, will non-recurring forest development monies be used for this purpose.

Of the 1,738,000 acres identified as needing forest development treatment in 1991, 428,046 acres have been treated as of 1994. With the relatively accessible acres accomplished, the more difficult areas remain to be treated. It is estimated that given current funding levels, 20 to 25 years of effort remain to accomplish the reforestation (289,896 acres) and thinning (1,020,058 acres).

Question 4. I have received comments from tribes regarding the Agency's inability to process Continuous Forest Inventory Data in a timely manner and indications are that the Agency may not be able to complete this process because of reported backlogs and proposed cuts in staffing. In your testimony, you report that inventory analysis has been completed on 91% of reservations. Can you elaborate on this?

Answer: Unlike inventory data processing, the analysis of the processed data has been the responsibility of the reservation resource manager with the technical guidance of the Area Offices and, when requested, the Branch of Forest Resources Planning. It is the BIA's policy to consider an Inventory Analysis dated and no longer current if the analysis is more than 10 years old. Many of the analyses reported as current were developed eight or nine years ago. Like the recently observed down trends in the number of current management plans, these inventory analyses will soon expire and be reflected as a reduced percentage over the next few years. This trend will continue unless something is done to reduce the present backlog of data processing and afford sufficient

capability to deal with today's expanding complexities in the natural resource sciences.

It is important to understand that the processing of inventory data and Inventory Analysis are two distinctly different functions and are performed by two separate entities. The processing of inventory data must be accomplished prior to the inventory analysis. It is a highly technical function requiring skilled mensurationists and biometricians that are familiar with state-of-the-art computer technologies. This function has historically been centralized because of its highly technical nature and associated costs. Inventory processing has been the responsibility of the Area Offices, and since 1983 the Central Office, Branch of Forest Resources Planning. At present, there are but a few qualified individuals in the BIA, and fewer yet under the employ of resource-rich tribes, that are skilled at inventory processing. This, combined with ever increasing complexities of data collection, processing and analysis for ecosystem considerations, declining budgets during years of increasing costs, and inflation have created a significant backlog in data processing.

**Question 5.** For the record, over the five years since the Act was passed, what are the estimated loss of revenue and annual loss of timber due to illegal trespass on Indian lands and the failure to enact regulations?

**Answer:** An average amount of 1,082,000 boardfeet of timber worth an estimated value of \$308,000 has been trespassed and successfully adjudicated per year since the enactment of the Act. This is but a small percentage of the trespass that actually occurs on reservations that goes unrecorded or is not successfully tried due to a number of factors. The primary inhibiting factor in trespass control is insufficient staff to police and report these activities.

**Question 6.** When the Act was passed in 1990, the Committee received estimates that nearly 16 million acres of Indian forest lands are held in trust. How has this figure changed over the last five years, is there a growth in the number of acres in forest lands or woodlands managed by Indian tribes?

**Answer:** In FY 1990, there were 15,976,820 acres of Indian forest lands held in trust. There were 16,880,459 acres reported at the end of FY 1994, an increase of 903,639 over the four-year period. Figures for FY 1995 will not be available until January 1996. This increase encompasses both timberlands and woodlands, and reflects a continuing trend that has added to the burden of data collection and planning. These increases are reported to be the result of:

1) tribes purchasing land primarily in an attempt to reclaim their reservation land base that has gone into individual ownership or non-Indian ownership as the result of turn-of-the-century allotment policies;

2) a refinement of acreage estimates through the reclassification of land values and tribally designated priority use (e.g., reclaimed agriculture or pasture lands) through the planning process; and

3) the availability of more accurate information through utilization of technological advances such as geographic information systems (GIS).

It is through the tribes' efforts to manage these lands that they are recognized as valuable timberland or woodlands.

**Question 7.** In the future, does BIA anticipate that it will be involved in collecting information regarding the status of management plan preparation, the application of provisions in the management plans or the results of plan implementation?

**Answer:** Provided that funds and qualified professionals are available, the BIA does anticipate that it will continue to be involved in collecting information regarding the status of management planning efforts and results of plan implementation. We would hope to intensify our efforts in determining the results of plans that are already in place in order to improve or amend implementation procedures.

**Question 8.** How has the American Indian Agricultural Resources Management Act impacted the development of integrated resource management plans within BIA?

**Answer:** The American Indian Agricultural Resources Management Act has had little impact on the development of integrated resource management plans. The Act established a mandate, but additional resources have never been available to support that mandate. Integrated Resources Management Plans (IRMP) that have been developed have been primarily through the initiative of individual tribes, which were in the process of development, or would have developed, such plans without formal mandates.

**Question 9.** How many agricultural resource management plans required by Section 101(b) of this Act have been developed or are currently under development?

**Answer:** There have been no IRMPs prepared as a result of the Agricultural Resources Management Act. No funds have been appropriated for this activity.



**Question 10.** In light of the proposed budget cuts at the Central and Area Offices of the BIA and the potential loss of capacity in those Offices, what are the implications for maintaining inventory analysis and management planning?

**Answer:** The 1996 conference funding level does not provide sufficient flexibility to fund individual tribes, Agencies, or Area Offices to perform the complicated task of maintaining inventories, analyses, and management planning. The 1996 conference level will result in downsizing the Area and Central Offices which in turn would cause reductions in these functions along with the management of other trust resources, technical assistance, and monitoring. Since it is already difficult to maintain these functions, further cuts will render it virtually impossible to keep up with the ever increasing demand. The overall implication of the 1996 reductions is that tribes do not have the necessary information to do natural resource planning and the BIA will not have sufficient reliable data to monitor trust responsibility compliance. The lack of planning will result in fewer timber sales, which in turn will result in less income for reservations and surrounding communities that depend on tribal timber for their economic well being.



## GRAND PORTAGE RESERVATION TRIBAL COUNCIL

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The Honorable John McCain, Chairman  
 Committee on Indian Affairs  
 SH-838 Hart Senate Office Building  
 U.S. Senate  
 Washington, D.C.

Dear Senator McCain,

October 2, 1995

The purpose of this letter is to provide a statement from the Grand Portage Reservation Tribal Council to the Senate Indian Affairs Committee. *This statement is submitted for the record of the Committee's September 20, 1995 oversight hearing on Indian forestry.*

The Grand Portage Tribal Council represents the Grand Portage Band of Lake Superior Chippewa, and is responsible for management of the forestry resources on the 56,000 acre Grand Portage Reservation in northeastern Minnesota. *Ninety percent of our Reservation is trust land, eighty-four percent is commercial forest.*

**The Grand Portage Tribal Council is strongly opposed to the BIA Forestry funding cuts that Congress is considering.** We currently receive \$50,000 per year, through a PL 93-638 contract, to manage our forest resources. Our forestry funding has remained the same since 1987. *Despite this fixed income, our actual timber cut has increased by 255 % over the past five years, from 1.1 million board feet to 3.9 million board feet (see attached graph).* This timber comes from timber sales funded by BIA forestry dollars.

Wood products from these timber sales help supply a Tribal sawmill enterprise at Grand Portage. This enterprise employs 21 workers; 75% of them are non-Indian. Up to six Tribal loggers from our community also depend on our timber sale program for their livelihood. These employment numbers may seem small, but the total population of the Grand Portage Reservation is less than 350. **The jobs associated with BIA forestry dollars are a significant part of the local economy of our Reservation.**



GRAND PORTAGE R. T. C.

PAGE 2 - Grand Portage Tribal Council Statement to the Senate Indian Affairs Committee for the record of the Committee's September 20, 1995 Oversight Hearing on Indian Forestry.

**The Grand Portage Tribal Council requests the Senate Indian Affairs Committee to recognize the fact that, even at the current \$50,000 funding level, our basic forestry program needs are not being met.** In 1987, the Grand Portage Reservation was the first Tribal Government to enter into a cooperative venture with the BIA to produce the first Tribal Integrated Resource Management Plan (IRMP) in the United States. This IRMP identified a minimum funding level of \$75,000 to implement the forestry portion of this plan. We have shown in this statement that, even at the \$50,000 funding level, we have been able to significantly increase timber production, which has resulted in a positive impact on private sector business activity on the Reservation.

**The proposed 30% cut to BIA forestry funding would have a devastating effect on our ability to address our basic management needs. *These basic needs include:***

- 1) An aggressive timber sale program to provide the raw materials for our forest product industries & the jobs they provide(*our 3.9 million board foot actual cut last year still falls far short of our 9 million board foot allowable cut*).
- 2) Adequate funding for resource management staff to ensure that best management practices are being followed with respect to:
  - a. Sustainability of timber volumes for future economic development.
  - b. Management of wildlife habitat through forestry harvest practices.
  - c. Protection of cultural resource values in the forest.

In conclusion, we recommend that current BIA forestry appropriations be maintained at the present levels. The current level of funding is necessary to maintain the basic level of forest management on Tribal trust lands that now exists. This basic level of management is needed to manage our Tribal forest resources for the economic well being of our Reservation community.

Sincerely,

Norman W. Deschampe  
Chairman, Grand Portage Tribal Council

-enclosure

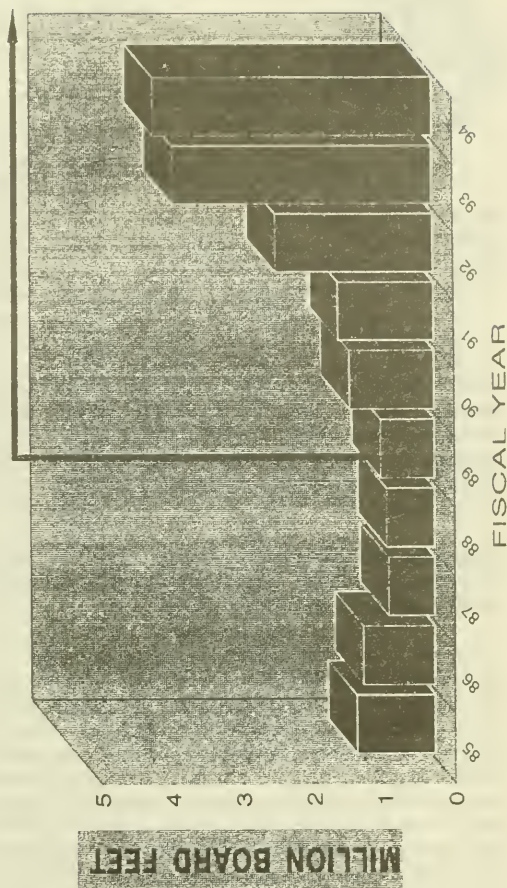
# GRAND PORTAGE RESERVATION TIMBER SALE VOLUME & VALUE 1985-1994



ANNUAL TIMBER SALE VOLUME  
GRAND PORTAGE RESERVATION



RTC CONTRACTED PROGRAM





## COQUILLE INDIAN TRIBE

295 S. 10th • P.O. Box 1435 • Coos Bay, OR 97420  
 Telephone 503-267-4587 • FAX 503-269-2573  
 1-800-622-5869

September 26, 1995

The Honorable John McCain  
 United States Senate  
 241 Russell Senate Office Building  
 Washington, D.C. 20510

Dear Senator McCain:

The Coquille Indian Tribe is a newly restored Tribe (1989) located in southwestern Oregon. We are a member tribe of the Intertribal Timber Council and are presently seeking to reacquire a small portion of our ancestral homeland by means of a federal land transfer to create the Coquille Forest. Additional information concerning our Coquille Forest proposal and legislation which we will be requesting from the Congress to accomplish the federal land transfer will be forthcoming in a separate letter.

The purpose of this letter is to commend you for holding the September 20, 1995, Oversight Hearing on Implementation of the National Indian Forest Resources Management Act (NIFRMA) and to provide a statement for the Hearing Record.

In the work on our Tribe's proposal to create the Coquille Forest, we have become very knowledgeable about NIFRMA. We fully agree with the testimony given by Mr. Jaime Pinkham, ITC President, concerning the significance of this Act to the management of Indian natural resources. It is truly a model piece of legislation and, without question, is the most important statute enacted in the history of Indian forestry. Federal, State, and private sector land managers who have become familiar with the Act view it as a modern sustained yield ecosystem management statute--a well conceived federal law which provides for healthy forest ecosystems while maintaining sustainable levels of timber production. An important aspect of the Act to our Tribe is the fact that all of its provisions are structured in a manner which fosters and facilitates Indian Self-Determination. It is the first Act addressing management of Indian natural resources which truly provides the impetus and flexibility for achieving Indian Self-Determination. The Act also contains numerous forward-looking provisions relating to forestry education, integrated resources management planning, development of tribal forestry programs and establishment of forest land assistance accounts which are vital to sound and innovative management of Indian forests. It is recommended that the Congress use NIFRMA as a standard or prototype for any proposed future legislation dealing with management of Indian land and natural resources.

Dr. John Gordon, who served as Chairman of the Indian Forest Management Assessment Team (IFMAT), provided information at the Hearing regarding the first comprehensive study of management of Indian forest lands accomplished under NIFRMA. The Coquille Tribe has found the IFMAT Report to be very useful in providing information about Indian forest management to other

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Senator McCain  
 September 26, 1995  
 Page two

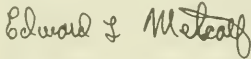
land managers and the general public. The recommendations contained in the report have been valuable to us in development of the Coquille Forest proposal. The severe under funding of the Indian forestry program described in the Report and in your statement at the Hearing is of great concern to us and all tribes who are presently or may in the future be responsible for management of tribal forest resources. Dr. Gordon and the IFMAT members are to be commended for their outstanding work in producing the IFMAT Report.

As a result of information provided to you at the Oversight Hearing, the Coquille Indian Tribe urges your Committee and the full Senate to provide appropriations for the Indian forestry program which will allow full implementation of NIFRMA. The large disparity in funding between the federal government's investment in Indian forest lands and Federal forest lands is both a disgrace and a violation of the federal trust responsibility. Of course, the first critical action is to restore the massive cuts proposed for Indian forestry in the FY 1996 Interior budget. We also urge you to take necessary action to have the Secretary of Interior and his Office of Regulatory Affairs release the new BIA forestry regulations implementing NIFRMA. The ITC, the BIA forestry staff, tribal leaders and tribal natural resources staff have invested over three years of work in developing these new forestry regulations. This effort was tribally driven and occurred with full tribal participation. The fact that these regulations continue to languish in the Interior Department due to bureaucratic game playing and inaction is truly "unconscionable".

Senator McCain, thank you for the opportunity to provide input on these forestry matters of vital importance to Indian tribes. We applaud your leadership and commitment in the Senate which was instrumental in the enactment of NIFRMA and your dedication to Indian natural resources matters. Your on-going and consistent efforts on behalf of Indian tribes are greatly appreciated.

The Coquille Indian Tribe requests that this letter be entered into the official record of the Oversight Hearing.

Sincerely,



Edward L. Metcalf,  
 Tribal Chairperson

cc: Mr. Mark Phillips, ITC Research Specialist  
 Washington, D.C.

Mr. Stanley Speaks  
 BIA, Portland Area Director

Mr. Jaime Pinkham  
 President, ITC

Mr. Terry Virden, Acting Director  
 Office of Trust Responsibility

L61110.542

# Fond du Lac Reservation

## Business Committee

105 University Road,  
Cloquet, MN. 55720  
Phone (218) 879-4593  
Fax (218) 879-4146

October 4, 1995

The Honorable John McCain, Chairman  
Committee on Indian Affairs  
SH-838 Hart Senate Office Building  
U.S. Senate  
Washington D.C. 20510

Dear Senator McCain,

The Fond du Lac Band of Lake Superior Chippewa requests that the following be entered into the official hearing record to the oversight hearing held September 20, 1995 on Indian forest management issues.

There has been much done in the last 20 years to improve the relationship between the Federal government and the Tribes in particular with the Bureau of Indian Affairs. The tribes are more involved with the management of their natural resources. Natural Resources are precious to the Tribes they are an essential part of the culture. Acts such as the Self-Determination Act and amendments and the National Indian Forest Management Act have really strengthened the tribes role in working with the BIA and other Federal Agencies in a Government to Government basis in the management of their resources. Other positive developments with the tribal federal relationship include the support of the Indian Intertribal Timber Council. This relationship has led to a good dialogue between the Tribes and the Federal Government on Forestry and Natural Resource management issues. The relationship has also led to the adoption of Integrated Natural Resource Management Planning for trust natural resources. The tribes and the BIA are not burdened with excessive regulations which limit their ability to react to changing needs, resource conditions, etc. on Tribally owned land. However, the case is quite different on allotted lands. There has been a lot of improvement in the last twenty but there is still the need for more improvement.

The biggest problem on Fond du Lac is the ability to get the resources to implement most of its management goals. In 1990 Fond du Lac approved a Natural Resource Management Plan. In order to carry out the plan Fond du Lac needed to strengthen the all the Natural Resource Management programs including forestry, wildlife, wildrice, fisheries and cultural resources. Most of these additional needs have not been met. Fond du Lac tried to meet our needs through the traditional funding mechanisms with the BIA. That proved to not be a viable alternative. Since 1993 Fond du Lac has gone to Congress seeking direct appropriations. Fond du Lac has managed to secure some funding for fisheries and wildrice. But no additional funding has been available to Forestry and Cultural resources and Wildlife.

Fond du Lac has approximately 22,000 acres of Trust Land. 80 percent of that is allotted. Prior to 1981 The management of the resources has handled through the Cass Lake Office of the BIA, which is 2 1/2 hours away for Fond du Lac. The forester responsible for management on those lands, was also responsible for the management of Leech Lake



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Executive Director  
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Reservation. Leech Lake has a slightly larger trust land base than Fond du Lac and Mille Lacs Reservation which at the time had about 3,700 acres of trust land. Mille Lacs is even further away from the Cass Lake office than Fond du Lac. As a result the Management was primarily custodial rather than active management of the resources on Mille Lacs and Fond du Lac. In 1981 the BIA funded a temporary position which later became permanent for Fond du Lac. As a result Fond du Lac was playing catch up with the management of their natural resources. In 1981 only the Tribal land (20% of the land base) had a forest inventory. The tribe funded a stand exam inventory which was completed in 1985. In 1989 Fond du Lac was finally able to secure funding for a Natural Resource Manager. The natural resource manager position was put in place to manage wildlife, wildlife and fisheries. This was a pretty tall order for one person. Since then the Natural Resource program has been able to secure additional funding through project work. However, these funding sources do not address the need for base level funding. The same is true with the forestry program. As stated before 80% of Fond du Lac's trust land base is allotted. The IFMAT study showed that it costs twice as much to manage allotted land when compared to Tribal or other federal lands. The allotments also cause problems when the tribe is trying to develop their lands for economic development or housing. Because of their limited tribal land base land suitable for those types of activities is scarce. As a result the tribe must purchase land for most of their economic development and housing needs. The Fond du Lac Band would be supportive of legislation that would help alleviate the problem with allotment but not infringe on the rights of the allottees.

The next area of concern is the implementation of the regulations for 101-630. The passage of P.L. 101-630 was a big step forward in the management of Indian Resources, and educating tribal members in the resources field. The regulations implementing P.L. 101-630 have been formulated and are ready for adoption. Yet because of other political considerations these regulations have not been adopted. In addition to adopting the regulations the BIA and the tribes need the resources to implement P.L. 101-630.

Forest Management does produce economic activity. Through the conversion of wood into useable products. The tribes and allottees have been receiving income through stumpage. Even with our needs the Minnesota Chippewa Tribe has been putting aside 25% of their stumpage revenues for forest management. This is in addition to the 10% administrative fees. These funds have been plowed back into management. These funds paid for the original stand exam inventory on Fond du Lac and other Minnesota Chippewa Tribe reservations. Even with this tribal addition to funding there still is not enough funds in the base to properly carry-out the Forest management program. The IFMAT pointed out that nationwide Indian forest management programs are under funded. Now with the self-governance Tribes taking their share. The Tribes are trying to divide up a piece of pie that is already too small. As a result smaller tribes such as Fond du Lac may end up with inadequate funds to fund their present programs. It has led to the Tribes fighting over funding levels. It seems like another case where federal results

in the tribes fighting amongst themselves instead of working together to achieve common goals.

There is a minimum base that is needed to run a forestry program. moneys for staff and staff support. 101-630 partially recognized that fact in recommended minimum funding levels for forested reservations. However, even for small reservation Fond du Lac's size that formula may prove to be inadequate. If the funds aren't available the legislation is somewhat meaningless.

The Fond du Lac Band of Lake Superior Chippewa thank you for this opportunity to present our views on Indian forest and natural resource management.

Sincerely,



Robert B. Peacock

Chairman

Fond du Lac Reservation Business Committee

cc: Intertribal Timber Council  
Chief Forester, BIA

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